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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-657

LOCAL 3489, UNITED STEELWORKERS OF AMERICA, AFL-CIO and UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Petitioners,

v.

WILLIAM J. USERY, SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONERS

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Petitioners,

v.

WILLIAM J. USERY, SECRETARY OF LABOR,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 520 F.2d 516 (7th Cir. 1975) and is reprinted in the Appendix to the Petition for Writ of Certiorari (Pet. App. 1a-15a).[1] The opinion of the district court is unreported and is reprinted in the Appendix to the Petition for Writ of Certiorari (Pet. App. 17a-22a).

[1] The Appendix to the Petition for Writ of Certiorari is referred to herein as "Pet. App." The single appendix is referred to herein as "App." Citation to exhibits attached to the pretrial stipulation but not included in the single Appendix will be in the form "Ex. A. ——."

JURISDICTION

The judgment of the Court of Appeals was entered on August 5, 1975 (Pet. App. 16a). A timely petition for writ of certiorari was thereafter filed on November 3, 1975, and granted on February 23, 1976. The jurisdiction of this Court rests upon 28 U.S.C. §1254 (1).

STATUTE INVOLVED

The statute involved is the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. §401, *et seq.*, in particular, Section 401 of that Act, 29 U.S.C. §481 which, in relevant part, reads as follows:

"Terms of Office; Election Procedures

* * * *

"Sec. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * *

"(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. . . . The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title."

QUESTION PRESENTED

Whether a union's rule requiring that a candidate for local union office has attended half (½) the regular monthly meetings held in the three years preceding nominations is a "reasonable qualification" for candidacy within the meaning of the Labor Management Reporting and Disclosure Act of 1959, where attendance is not difficult for any member and any member may qualify simply by devoting two hours every other month to union affairs.

STATEMENT OF THE CASE

Introduction

United Steelworkers of America, AFL-CIO ("Steelworkers" or "International Union") is an international labor organization with 1,400,000 members. The Steelworkers has approximately 5,200 chartered local unions, one of which is Local 3489.[2] The membership of Local 3489 is composed entirely of production and maintenance employees of the Stran Steel Corporation plant in Terre Haute, Indiana (Pet. App. 2a; App. 8). At the time of the election which is the subject of this lawsuit, there were 660 members in good standing in the Local (*id.*).

The governing body of the Steelworkers is the International Convention, which meets every two years. It is comprised of delegates elected by the constituent local unions in the Steelworkers. The Convention adopts the International Constitution, which governs the affairs of the union between conventions (App. 8). Among the matters

[2] At the time of the election herein, there were approximately 1,250,000 members and about 3,700 affiliated local unions chartered by the International Union (App. 9-10). The increase both in members and in the number of chartered locals has resulted largely from the affiliation of the International Union of Allied and Technical Workers of the United States and Canada, District 50.

regulated in the Constitution is the election of union officers.[3]

Until 1962, the Constitution provided that the term of office in each Steelworker local would be two years. It also provided that, to be eligible for local union office, a member must have attended at least one-half of the regular membership meetings conducted by his local during the preceding term of office, i.e., during the preceding twenty-four months. At the 1962 Convention, the Constitution was amended to provide that the term of local union office would be three years, rather than two.[4] No change was made in the meeting attendance requirement (App.

At the 1964 Convention, rank-and-file delegates, on their own initiative, proposed that the Constitution be amended to expand the meeting attendance requirement to thirty-six months, so that it would be coterminous with

[3] The relevant provision of the Steelworkers' Constitution (Ex. A, 44-45) reads as follows:

[Article VII]

• • •

"Sec. 9. No member shall be eligible for election as a Local Union Officer or Grievance Committeeman unless

(a) He shall have been in continuous good standing for a period of twenty-four (24) months immediately preceding the election, or if his Local Union has been in existence for a lesser period prior to the election, he must have been in continuous good standing from the time that he joined such Local Union; and

(b) He is employed in a plant or mill or other place within the jurisdiction of the Local Union; and

(c) He has attended at least one-half (½) of the regular meetings of his Local Union for thirty-six (36) months previous to the June, 1970, election, unless his Union activities or working hours prevented his attendance."

[4] This was consistent with Section 401 (b) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §482 (b), which requires that locals elect officers "not less than once every three years."

the new three-year term of office. The change, though not sponsored or sought by the Union's hierarchy, found favor with the delegates and a majority voted to adopt the proposed amendment (App. 27-28).[5]

The Secretary of Labor was less enthusiastic than the Steelworkers' membership about the new meeting attendance rule. Beginning with the 1967 local union elections, the first to be conducted under the new rule, and continuing to date, the Secretary has engaged in an ongoing challenge to the validity of the rule under the Labor Management Reporting and Disclosure Act of 1959 (hereinafter "LMRDA" or the "Act"). This attack has persisted in the face of one decision after another in which those courts which actually reached the merits were unanimous in declaring the Steelworkers' meeting attendance rule to be a reasonable qualification under the Act. *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973); *Shultz* v. *Local Union 6799,* 71 LRRM 2820 (C.D. Cal. 1969), *aff'd on other grounds,* 426 F.2d 969 (9th Cir. 1970), *aff'd sub nom., Hodgson* v. *Local 6799, United Steelworkers of America,* 403 U.S. 333 (1971); *Shultz* v. *Local 1299, United Steelworkers of America,* 324 F. Supp. 750 (E.D. Mich. 1970), *aff'd in part, sub nom., Hodgson* v. *Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971); *Shultz* v. *Local 1150, United Steelworkers of America,* 75 LRRM 2869 (S.D. Ind. 1970), *vacated on other grounds* (No. 71-1467, 7th Cir. July 1971, unreported).[6]

[5] In 1974, the delegates to the Convention voted down a proposed change in the meeting attendance rule which would have reduced the attendance requirement from one-half to one-third. Officials of the Department of Labor attended as observers. *Proceedings Of The Seventeenth Constitutional Convention Of The United Steelworkers of America* at 232-238, 252-253.

[6] Compare, *Brennan* v. *Local 3911, United Steelworkers of America,* 372 F. Supp. 961 (N.D. Ill. 1973) where a district court in dictum opined that the rule was not a reasonable qualification.

The Court of Appeals in the instant case has departed from this line of authority, creating, in the process, a square conflict between its decision and that of the Sixth Circuit in *Brennan* v. *Local 5724, supra,* which upheld the meeting attendance rule. The Secretary and the Union have joined in asking this Court to resolve the conflict.

Actually, the candidate qualification issue here involved is one on which this Court previously granted certiorari in *Hodgson* v. *Local 6799, supra.* There, it will be recalled, the Secretary seized upon a member's complaint about other aspects of the local union election as the vehicle for launching an attack on the meeting attendance rule. The Secretary's one-time practice was to challenge union election procedures which he didn't like even though the union's members were content with the procedures, and no member had complained about them.[7] This Court held that the exhaustion requirements contained in Section 402 (a) of the Act barred the Secretary from litigating the meeting attendance rule in the absence of an internal union protest on that subject. Having so ruled, the Court did not reach the question of the reasonableness of the rule itself. 403 U.S. at 341.

The Election At Local 3489

The cases cited above all grew out of the 1967 local union elections. The present case arises out of the June 22, 1970 election of officers at Local 3489.[8] In accordance with standard Steelworker procedure, a nomination meeting was conducted at which any member could be nominated for local union office (Ex. B, 18-19). All told, there were fifty-

[7] See cases discussed in *Hodgson* v. *Local 1299, supra,* 453 F.2d at 568, n. 3.

[8] Another pending case is *Brennan* v. *Local 5702, United Steelworkers of America,* Civ. Act. No. 73-3272 (E.D. La.) where both parties have filed motions for summary judgment. The 1976 round of Steelworker elections is now in progress at 5,200 local unions.

three nominations for office and grievance committee positions but nineteen persons declined thirty nominations (App. 11-13). This left twenty-three candidates who were nominated and wished to run (App. 13-14, 23).[9]

At the nomination meeting, an Election Committee was elected (App. 13-14). One of the Committee's duties was to determine whether those nominated and desirous of running satisfied the Steelworkers' meeting attendance rule and other eligibility requirements (Ex. B, 26-27). Only two candidates were declared ineligible because they had not attended a sufficient number of union meetings. One, David L. Jones, had attended three meetings while the other, B. Brackall, had attended sixteen meetings (App. 14).[10] No claim is made that either was, in fact, eligible under the rule.

No one knows how many members were eligible to hold office in Local 3489. All one can say with certainty is that there were *at least* twenty-three members in the Local who were eligible. Twenty-two were eligible by virtue of meeting attendance alone (App. 11, 23), and one, Wayne Larue, was eligible, according to a Department of Labor investigator, by combining the meetings he actually attended with credits for nine meetings which fell during his working hours (App. 81-86). There may have been

[9] Five candidates ran both for office and grievance committee (D. Jones, Bernard Frye, Fred Blade, Mike Mahoney, and Russell Forsythe) (App. 11-12, 23).

[10] The Stipulation lists Brackall as an incumbent officer in the Local (Trustee) eligible for union office (App. 11). But elsewhere in the Stipulation, he is not listed among the six nominees who were incumbents (App. 13) and he is identified as one of the two members declared ineligible (App. 14). He could not have been both an incumbent and a non-incumbent and both eligible and ineligible. Manifestly, the parties erred by listing him as an eligible incumbent. Accordingly, of the twenty-two members who were eligible in 1967 by virtue of meeting attendance alone, nine (rather than ten) were incumbent officers.

others eligible by virtue of combined work credits and meetings.[11] The Local had no occasion to determine the eligibility status of employees who were never nominated or who were nominated but declined (App. 13).

The principal contest in the 1970 election was for the office of President, by far the most vital office in small locals such as this one. Three candidates competed in this campaign (App. 16). In the other contest, four candidates ran for three trustee offices (*id.*). In the six remaining offices, the nominated candidates were unopposed (*id.*). As for carryover officers, it turns out that six won election either to the same or some other office while non-incumbents were elected to the important offices of Vice President, Recording Secretary and Treasurer and to one minor office, Guide (App. 14, 16).

No evidence was offered tending to show that the leaders of Local 3489 had become entrenched or insulated from challenge. On the contrary, several witnesses, complainant Frye among them, testified to the large turnover in officers in the Local (App. 69, trial transcript at 171), specifically, five Presidents in ten years (App. 98) and an estimated forty changes in officers over four elections (App. 99).

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[11] During the relevant period, the workday was divided into three shifts with employees generally working the same shift without rotating (App. 10). If, as the Secretary's witness testified, Mr. Larue earned nine credits by reason of a conflict between his working hours and meetings, then other employees—an undetermined number on the same shift—were also entitled to additional credits, perhaps as many as nine. The witness checked the work records for members who had attended fifteen or more meetings (the furnished list) but evidently did not conduct such a check for members who attended between nine and fourteen meetings (App. 83-86). Yet without explicit evidence negating the possibility, it seems likely that some members in the nine to fourteen meeting category who worked the same shift as Larue were eligible, just as he was, through a combination of meetings attended plus work credits.

Proceedings In The District Court

Following the election, and after exhausing internal union remedies, Bernard Frye, one of the two defeated candidates for president of the Local, though himself eligible, filed a complaint with the Secretary of Labor asserting, *inter alia,* that the meeting attendance rule was unreasonable (App. 16-17).[12] Thereafter and within the time permitted by the statute, the Secretary instituted this action against Local Union 3489 under Title IV of the LMRDA seeking to set aside the June 22, 1970 election. The complaint alleged that the election was void because the Local had applied the meeting attendance rule and because of a "secret ballot" allegation not in issue here (App. 2-4). The Steelworkers, as parent international union, intervened as a party defendant (App. 1, 5-6).

The facts relating to the meeting attendance issue were largely stipulated or are otherwise uncontroverted. In the three years preceding the June 22, 1970 election, the Local held one meeting each month, lasting, on the average, approximately one hour and forty-five minutes (App. 10, 78). Attendance averaged forty-seven in this span (App. 11). For much of the three-year period, the meeting was split into two parts, both regularly scheduled.[13] After March of 1970, a single meeting was held on the third Sunday of every month (*id.*). All meetings were conducted in the Union hall which is located within three miles and a ten minute automobile ride from the Stran Steel plant (App. 10).

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[12] In 1973, the complainant won the presidency of Local 3489 in an election conducted under the Steelworkers' meeting attendance rule (Pet. App. 3a-4a, 18a). As an incumbent, he was later defeated in April of 1976 by a member who attended more than enough meetings to satisfy the rule.

[13] One session met at 4:30 pm on the second Wednesday of every month. The other met at 1:30 pm on the following day (App. 10-11).

The monthly meeting is the place where the official business of the local is transacted, and where the decisions are made (by vote of those attending) on all important union matters. Under the constitutionally prescribed agenda format, the Recording Secretary reads all communications received by the local during the preceding month (Ex. A, 81); the Treasurer and Financial Secretary report on all financial affairs, and each proposed disbursement is voted upon by the members present (Ex. A, 81-82, 84-85); a staff representative employed by the International Union reports on any and all current matters of interest at the International level, including the status of relevant collective bargaining negotiations and pending arbitration matters (Ex. A, 83); the chairman of the local's Grievance Committee reports on the status of all pending grievances arising under the collective bargaining agreement (Ex. A, 83); reports of the other standing committees (Civil Rights, Workmen's Compensation, Welfare, Safety, Finance, etc.) are presented, debated and resolved (*id.*); and in the "unfinished business" and "new business" sections of the meeting all other matters of importance to the union are debated and resolved by membership vote (Ex. A, 83-84).[14]

The parties agreed as follows with respect to the purposes of the Union's meeting attendance rule (App. 21):

> "38. It is the position of the defendant International that the meeting attendance requirement as set forth in the International Constitution, By-Laws for Local Unions and the Local Union Election Manual should be retained because it serves a three-fold purpose:

[14] The meeting's role as a "school" for future local officers is described in more detail in the testimony of a union staff representative in another meeting attendance case to which the Secretary and the Steelworkers were parties. *Schultz* v. *Local 1299, United Steelworkers of America, supra.* For this Court's convenience, we have reproduced the relevant portions of that testimony as Appendix A to this brief. In particular, see Appendix A at 11-22 (hereinafter cited as "Br. App. A, ——").

> "(a) to encourage broad base participation in the affairs of the union, and to obtain as large a turnout as possible at the meetings at which the union's business is conducted;
>
> "(b) to attempt to assure that candidates have demonstrated an interest in and are likely to be concerned with the problems of the union; and
>
> "(c) to attempt to insure that candidates have participated in the affairs of the union and are, therefore, sufficiently familiar with its problems to be able more intelligently to fulfill the numerous responsibilities and duties attendant to holding office.
>
> "This position was made known to representatives of the Secretary of Labor by representatives of defendant International prior to the initiation of this suit."

The parties also stipulated as to the Secretary of Labor's prior interpretations of the "reasonable qualifications" provision of Section 401 (e). The Secretary publishes an Interpretative Manual setting forth his viewpoint as to the proper interpretation of the statute, to assist unions in complying with the LMRDA. At the time of the election challenged herein, paragraph 422.250 of the Manual (App. 55), captioned "Participation in Union Affairs," stated a general principle that, absent unusual circumstances, an eligibility rule designed to assure participation in and familiarity with union affairs is a reasonable candidacy qualification:

> "Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reasonableness of any of the qualifications, they are not to be considered unreasonable in themselves."

As one specific application of this general principle, the Manual declared that a requirement of fifty percent meeting attendance over a twenty-four month period is a reasonable candidacy qualification, except where attending presents "an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction." Manual Par. 422.206 (App. 54). The Interpretative Manual in upholding fifty percent meeting attendance rules, did not state an exception for cases where only a small percentage attend (App. 54). Some time in the mid-1960's, the Secretary instituted a lawsuit against a local of the Brotherhood of Railway Carmen on the theory that an otherwise reasonable rule *was* invalidated because only a small percentage qualified under the rule. That lawsuit was withdrawn, however. In explaining the withdrawal, the Department of Labor stated that the Secretary had conducted "a general review of attendance requirements" and had concluded that a rule should *not* be invalidated simply because a small percentage actually qualify (App. 51, 53):

> "The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. . . .
>
> "Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.*" (Emphasis added.)

Thus, the Secretary's prior view was that a small eligibility percentage does not invalidate a meeting attendance rule.

Finally, the parties stipulated to the receipt of "expert" testimony which the Secretary's Director of Research had given in another meeting attendance case involving the Secretary and the Steelworkers (App. 21, 30-45). Included was a chart which the expert had prepared (App. 21-22, 45-48).

In the opinion of the Secretary's Director of Research, meeting attendance requirements do not increase attendance, and there are other ways in which members can become familiar with the responsibilities of union office. He acknowledged, however, that in expressing these opinions, "I disagree with the Secretary" (App. 42-43) who, as noted above, had declared that meeting attendance rules serve legitimate union interests. The expert further acknowledged, in response to questioning by the judge, that while he does "not personally care for" meeting attendance rules, they are "a reasonable way" to assure that candidates are familiar with the responsibilities of union office, provided they are "not too restrictive" (App. 40, 44).

The chart shows that the constitutions of international unions having twenty-five percent of all of America's union members impose meeting attendance requirements as a

candidacy qualification for local union office (App. 32, 45-48.) Another seven percent of America's union members are in international unions whose constitutions expressly leave the use of a meeting attendance requirement to local union option (App. 32, 45-48). The remainder of the international union constitutions are silent on this subject, but the expert testified that within these international unions there are locals whose *own* bylaws impose meeting attendance requirements (App. 34).

Opinion Of The District Court

The district court upheld the Steelworkers' meeting attendance rule. In doing so, it agreed with a hitherto unbroken chain of authorities, all declaring the Steelworkers' meeting attendance rule a reasonable requirement under §401(e) of the LMRDA. The district court readily distinguished *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492 (1968). That case involved a rule which prohibited members from holding local union office unless they had previously held union elective office. The Steelworkers' meeting attendance rule stood on an altogether different footing, said the district court. Under the prior office holding restriction in *Hotel Employees,* the employee had no control over his eligibility. Instead, eligibility depended on how the entrenched leaders chose to use their appointive powers. In marked contrast, the Steelworkers' meeting attendance rule disqualified no one. The rule, said the court, leaves each member free to qualify himself for union office by giving less than two hours of his time every other month, on the average, to union activity. The district court flatly rejected the notion that the reasonableness of a candidacy requirement could be determined on the basis of eligibility percentages where compliance with the requirement rests not with entrenched leaders, but in the hands of the member himself. Finally, the court found, the rule was designed to insure that candidates had demonstrated an interest in union affairs prior to election and would, if elected, be able more knowledgeably to fulfill their duties (Pet. App. 19a-21a).[15]

Opinion Of The Court Of Appeals

On appeal, the Seventh Circuit reversed, holding that the meeting attendance rule was not a reasonable qualification. The Court of Appeals read *Hotel Employees* to mean that if the results of a rule were such that a high percentage of employees was not eligible (ninety-three percent in *Hotel Employees* and ninety-six and one half percent here, by the court's reckoning),[16] that fact alone proved that the rule could not be a reasonable candidacy requirement (Pet. App. 7a-8a). Moreover, on the basis that LMRDA was aimed at the abuses of entrenched leadership, the court saw the rule as a device to keep incumbent leaders in office. This was so, it said, because insurgents would have to plan eighteen months in advance in order to acquire sufficient attendance credits to challenge incumbent office holders. Moreover, the court surmised, some members might have been content with the leadership and therefore stayed away from meetings until it became too late to qualify (Pet. App. 9a).

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[15] As to the balloting allegation, the district court found no violation because every member of the Local had ample opportunity to mark his ballot in secret and there was no evidence showing that the lack of a voting booth may have affected the outcome of the election (Pet. App. 21a-22a). The Seventh Circuit reversed, however. In its view, it was not enough that the Union provided an opportunity for each voter to mark his ballot in secrecy. Instead, the court held, the Act demands that the Union "assure" the sanctity of the ballot (Pet. App. 14a). In any event, balloting is no longer an issue in this case.

[16] The 96.5 percent figure represents the court's finding of twenty-three eligible members out of a total of 660. For reasons explained herein at pages 7-8, it appears that more than twenty-three members were eligible.

Steelworker reliance on the Secretary's Manual was misplaced, the court stated, first, because the Secretary had revised the Manual in 1973, three years after the election at issue, and second, because the reasonableness of a two-year fifty percent meeting attendance rule did not, in its view, determine the reasonableness of a three-year rule. It characterized the latter as possibly harsher by half with respect to the number of meetings required and the time limitation in making a decision to run (Pet. App. 10a).

The Seventh Circuit expressly accepted *all* the district court's findings of fact (Pet. App. 15a). When it came to the purpose of the meeting attendance rule, however, it treated the district court's findings with respect thereto as arguments rather than as findings of fact. These findings were rejected on the ground that similar "arguments" had been rejected in *Hotel Employees* (Pet. App. 11a). The court of appeals also discounted the rule's objectives because it thought that one of them—"larger turnouts" at meetings—had not been achieved and that another—competent union leadership—could be met by unspecified means other than the rule (*id.*). In reaching its decision, the court declined to follow the Sixth Circuit's decision in *Brennan* v. *Local 5724, United Steelworkers of America, supra,* 489 F.2d 884 (Pet. App. 8a).

ARGUMENT

THE MEETING ATTENDANCE RULE IS REASONABLE

Introduction and Summary

As noted, Section 401(e) of the LMRDA, 29 U.S.C. §481(e), provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly imposed)."

At issue in this case is the Secretary's contention that the Steelworkers' meeting attendance requirement as applied to the June 1970 election at Local 3489 was unreasonable. There is no contention that the rule was not uniformly imposed (Pet. App. 5a).

At the Secretary's urging, and contrary to the teachings of every other court which has ruled on the matter, the court below placed an interpretation on Section 401(e) under which the effect or impact of the attendance rule on the membership of each local union is the main determinant in deciding whether the rule passes the "reasonable" test. If a high percentage is disqualified, says the Seventh Circuit, that fact *alone* shows that the rule is unreasonable (App. 7a, 8a). In espousing this theory, the court suggests that it is mandated by the decision in *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6,* 391 U.S. 492 (1968).

As we have indicated, other courts do not subscribe to this legal analysis. Chief among them is the Sixth Circuit which has declared that the effect of the Steelworkers' meeting attendance rule is *not* the touchstone for determining its reasonableness. *Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884, 888 (6th Cir 1973). In that court's view, it is incorrect to read *Hotel Employees* as commanding invalidation of a candidacy requirement which every member could easily have met merely because a large number of members were unwilling to meet it.

We believe the Sixth Circuit's analysis is the correct one and that the rule applied in the instant case is a reasonable candidacy requirement. To further support our claim, we show herein that:

A. The rule is designed to accomplish legitimate union objectives—objectives which the Secretary of Labor repeatedly has sanctioned as the valid foundation for eligibility requirements;

B. The purpose of Title IV of the LMRDA was to eradicate an evil which Congress found intolerable—that incumbents were able to keep themselves entrenched through a series of undemocratic devices, including eligibility requirements which disqualified all or virtually all potential opponents—and the meeting attendance rule in this case does not fit the category of evil against which Congress legislated; and

C. The arguments adopted by the court below for striking down this rule—particularly the reliance on the small percentage of members who actually qualified—do not warrant invalidating the rule.

First, however, we take a closer look at the rule itself and the nature of the "burden" placed on members who wished to qualify. Under the Steelworkers' Constitution, local union officers and grievance committeemen are elected for three year terms of office. The meeting attendance rule is one of several Constitutional pre-requisites for eligibility to hold local union office. It provides that to be eligible a member must have attended one-half of the regular monthly meetings during the thirty-six months preceding the election, unless union activities or working hours prevented his attendance. This requirement is made applicable by the Constitution to all 5,200 Steelworker locals.

The uncontroverted facts in this case show that all any member had to do to satisfy the rule was to devote approximately one hour and forty-five minutes to union affairs every other month, on the average, during the three-year period between elections. Reduced to simple mathematical terms, the rule thus imposed on members the obligation to spend approximately thirty-two hours at union meetings every three years. The meetings were regularly scheduled in a set pattern and, to accommodate all the members, were conducted in split sessions or, at term end, on a Sunday. Finally, the Union hall was conveniently

situated within a few miles and a ten minute automobile ride from the plant. In these circumstances, attendance clearly was not difficult for any member, and the requirement imposed no onerous logistical burden on any segment of the membership.

A. The Steelworkers' Meeting Attendance Rule Is Designed To Accomplish Legitimate Union Purposes.

Prior to the institution of this action, the International Union explained to representatives of the Secretary of Labor the three reasons why it desired retention of the meeting attendance rule.

(1) *Encourage Opposition*

The Steelworkers has an institutional interest in encouraging broad-based participation in the affairs of the union and to obtain as large a turnout as possible at the meetings. The local meeting is the place where the official business of the local is conducted, where its policies are determined and where decisions are made on how its treasury is to be spent. That being so, the International Union considers it essential that sufficient members attend to prevent the incumbent local union officers from making these decisions without effective membership control. Since there is general apathy among workingmen about attending union meetings (App. 41-42), some encouragement is essential to secure membership attendance. The eligibility requirement is uniquely well suited to that purpose, for it compels those who are dissatisfied with their incumbent leadership (and who wish to challenge that leadership at the next election) to attend the meetings.

The rule had its intended effect at Local 3489. Average attendance at meetings was forty-seven. Since there are only ten officers, this means that on the average, nearly thirty-seven non-officers attended each month. The officers

were thus denied any opportunity to exercise dictatorial control.

On precisely the same record as that made in the present case, the district court in *Shultz* v. *Local 1299, supra,* found that "the purpose of the meeting attendance rule was and is to accomplish legitimate union goals, namely, to provide a constant check upon the growth of unbridled control of the local's affairs by incumbent officers. . . ." 73 LRRM at 2677.[17] This finding was echoed by the district court in *Brennan* v. *Local 5724, United Steelworkers of America, supra,*[18] and later endorsed in that case by the Sixth Circuit. "[T]he Steelworkers' rule fosters the objec-

[17] See also *Shultz* v. *Local 1150, United Steelworkers of America,* 75 LRRM 2869, 2872 (S.D. Ind. 1970), *vacated on other grounds,* (No. 71-1467, 7th Cir., July 1, 1971, unreported) where the court found that one of the three purposes served by the Steelworkers' meeting attendance rule was to encourage broad participation in the union's affairs and to obtain as large a turnout as possible at the meetings.

[18] This purpose for the rule was explained by the General Counsel of the Steelworkers and seconded by the Assistant to the President of the Union testifying in *Local 5724,* a case in which the Secretary and the Steelworkers were parties.

> "The attendance at local unions is quite variable; however, we think it is valuable even at those local unions where it [the rule] has not given rise to the kind of attendance that one would like to see because at least it insures that those who have problems, those *who are* in *opposition to the local union leadership, will come* in order *to keep ripe their right to run against the local union leadership.*
>
> "We think this is important too in order that the local union leadership is *not permitted to function* as *sort of a one-party system unaccountable to anyone.* We think it is important that those people get there. We certainly know that it has had that effect, even where it hasn't had the effect of creating a great deal of attendance." (Emphasis added.)

For this Court's convenience, we have reproduced the relevant portions of the testimony in that case as Appendix B to this brief. The passage quoted above appears at Appendix B at 37, hereafter cited as "Br. App. B. ——."

tives of the Act . . . by requiring dissidents to attend local union meetings it assures that incumbents cannot administer the union's affairs in an uncontrolled, arbitrary manner." 489 F.2d at 889, n. 4.

The Secretary of Labor, in a series of opinion letters, has himself affirmed that meeting attendance requirements are "a reasonable means of encouraging participation in the affairs of the union." (App. 50-55.)

Notwithstanding this body of factual and analytical materials, the court below misconceived the purposes underlying the rule. Thus, the Union did not assert that the rule fosters "large turnouts" at union meetings (Pet. App. 11a). What we said is that it encourages as large a turnout as possible. Certainly attendance is higher than what it would be without the rule. But even more important than the number of members is the identity of the members encouraged to attend meetings. This the court of appeals completely overlooked. The Steelworkers' rule insures that those who are in opposition to the leadership will come to union meetings in order to keep ripe their right to run for local union office. As such, the rule actually furthers the objectives of the Act. The validity of this purpose cannot be judged, therefore, on the basis of some undefined standard for a "high turnout" at which the number of members attending becomes sufficient to satisfy a court, *ex post facto,* of the rule's worthiness.

(2) *Demonstrated Interest*

The Steelworkers also has an institutional desire to assure that those who seek office in its locals have demonstrated at least minimal interest in the welfare of the Union and its members. As found by the district court in the instant case, the meeting attendance qualification is thus designed to "insure that candidates have demonstrated an interest in union affairs prior to the election and are there-

fore likely to continue to do so, if elected." (Pet. App. 20a-21a, App. 21.) Once again, other courts passing upon the Steelworkers' rule have joined in finding this to be one of its purposes.[19] Moreover, the validity of the purpose was recognized in *Goldberg* v. *Amarillo General Drivers*, 214 F. Supp. 74, 79 (N.D. Tex., 1963):

> "It is true enough that a union organization has the right to exercise proper discipline of members and prescribe conditions which may be tests of good faith or designed for tokens of interest in the welfare of the union, such as an extended period of membership, *or regular attendance at meetings* . . ." (Emphasis added.)

Likewise, the Secretary of Labor has himself attested that unions have a "legitimate interest" in "obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization." (App. 51-53.)

The court of appeals below did not disturb the district court's finding that "demonstrated interest" is one purpose for the rule. Indeed, with the strictures of Rule 52(a) of the Federal Rules of Civil Procedure firmly in view, it expressly refused to reverse *any* fact findings made by the trial court (Pet. App. 15a).[20]

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[19] *Brennan* v. *Local 5724, United Steelworkers of America, supra*, 489 F.2d at 889. "We believe that the Steelworkers' rule has a direct, substantial relationship to fitness to hold office in that participation in union meetings is one indicia of interest in union affairs."

[20] We believe the court of appeals was incorrect when it treated this finding as to purpose as though it were identical to the "impressive achievement" argument made by the union in *Hotel Employees*. It is one thing to assert, as the union did there, that a rule which necessarily entrenched incumbent leaders and made opposition impossible is nevertheless reasonable merely because those leaders have acted benevolently. It is quite another for a court, in determining the reasonableness of a rule which does not, by itself, prevent contests for office or perpetuate union leadership, to examine the purposes which the rule is intended to serve.

(3) *Informed Leaders*

Finally, the Steelworkers has an institutional interest in insuring that those who obtain local union office have a working knowledge of the union's affairs and are familiar with its problems so that they can more intelligently fulfill the numerous responsibilities and duties attendant to holding office (App. 21). The district court herein found that the meeting attendance rule does serve this purpose (Pet. App. 20a-21a). The same finding was made in *Brennan* v. *Local 5724, supra*, by the district court and the Sixth Circuit. Indeed, *every* district court which heard this issue has found as a fact that one purpose of the Steelworkers' rule is to attempt to insure that candidates have participated in the affairs of the union and are, therefore, better equipped to perform the myriad and complex responsibilities of holding local union office.[21]

The Steelworkers' Constitution sets forth the internal administrative functions to be performed by local union officers (Ex. A. 46-52). In addition, the officers are charged with the responsibility of administering and implementing collective bargaining contracts and increasingly more complicated separate benefit agreements (insurance, pension and supplemental unemployment benefit plans, for example). Many of the officers have, of course, participated in the negotiation of these agreements. It would be tragic for the union's members if the economic benefits and employee protections won through hard bargaining—including, on occasion, sacrifices entailed by long strikes—were eroded through poor administration by uninformed local union officers. Moreover, given the large number of multi-plant,

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[21] *Shultz* v. *Local 1299, United Steelworkers of America, supra*, 324 F. Supp. at 756; *Shultz* v. *Local 1150, United Steelworkers of America, supra*, 75 LRRM at 2872; *Shultz* v. *Local Union 6799, supra*, 71 LRRM at 2823. The evidentiary basis for the finding in these cases consists of facts stipulated to in the present case (App. 21).

indeed industry-wide agreements entered into by the Steelworkers, such losses may well have an impact beyond the particular local simply because agreed-upon contract interpretations take on precedential significance in such bargaining structures.

In recent years, a growing number of federal laws regulating or otherwise affecting union conduct have continuously added to the complexities of holding union office. Titles II and V of the LMRDA, 29 U.S.C. §§431-432 and 501-504, are just the beginning. The passage of the Civil Rights Act of 1964, Title VII, 42 U.S.C. §2000(e), *et seq.* has imposed on local union officers the legal obligation to understand and deal with the interrelationship between employment discrimination and existing seniority systems. The burden is a heavy one, for a "wrong" decision in this area by the officers, even if made in good faith, may be disastrous in its consequences. *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975).

Similarly, the judicially created federal duty of fair representation has made it imperative that local union officers meet specified standards concerning the manner in which they handle and process employee grievances under the grievance-arbitration provision of the contract. *Vaca* v. *Sipes*, 386 U.S. 171 (1967).[22] One other example with enormous impact on collective bargaining for a number of years was the President's economic wage stabilization program which placed an added dimension on the responsibilities faced by local union officers.

Along with creating new responsibilities, recent legislation has also provided local officers with new sets of tools for use in improving the lot of the union's members. The

[22] Of course, compliance with this duty is but one obligation of many which stem from the Labor-Management Relations Act of 1947, 29 U.S.C. §151 *et seq.* See, in particular, Section 8 (b) of that Act, 29 U.S.C. §158 (b).

Occupational Safety and Health Act of 1970, 29 U.S.C. §651, *et seq.* is one and the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.* is another. But these tools—and they are complicated ones—will be of small benefit to the members unless local union officers are sufficiently well informed to initiate and carry forward the appropriate procedures.

There are other reasons inherent in the Steelworkers' structure and philosophy which explain why it is vitally important to the International Union that it strive to obtain qualified local union officers. A cursory glance at the Constitution shows that the Steelworkers is a highly centralized international union. The International Constitution prescribes the rules governing the term, qualifications, and duties of all local union officers, and the conduct of virtually all local union activities, including meetings, discipline, membership, etc. (Ex. A, 41-68, 79-86). Dues and initiation fees are set by the International Constitution and are remitted by employer check-off (or by the local directly) to the Secretary-Treasurer of the International Union (Ex. A, 68-70, 76).

Perhaps more importantly the International Union—rather than the local union—is the exclusive bargaining agent for all the employees represented by Steelworkers. The International Union is also the named party to collective bargaining agreements, and no strike can be called without the approval of the Steelworkers' president (Ex. A, 76-77). In turn, this means that where a "no strike" provision is contained in the contract, as is typically the case, the International is a party to that provision with all that status implies including lawsuits and legal sanctions in the event local union members breach such a provision. Since this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks, Local 770*, 398 U.S. 235 (1970), injunctions—hence possible contempt sanctions—face unions which persist in violating

their contractual obligations. Not surprisingly, therefore, the Steelworkers Union is dedicated to responsible unionism—to the principle that contractual commitments, including "no strike" pledges must be met.[23]

The combined effect of all these factors surely justifies the Steelworkers' quest for qualified, knowledgeable and responsible local union leaders.

The local union meeting is the most practical educational training ground for achieving this objective.[24] Attendance at meetings is a simple and effective way to assure that members acquire the knowledge necessary for performing the functions of office. The local union meeting is where the local's business is discussed, debated and transacted. The agenda format required by the International Constitution virtually assures this result.[25] Thus, in the typical meeting the staff representative reports on any and all current matters of interest at the International level. He also serves as a channel of communication from the rank and file members, relaying their views and opinions back to the International officers (Br. App. B 30). Meeting reports from local union committees inform the membership of every phase of local union activity, including con-

[23] See the testimony of John Rooney, Assistant (for fifteen years) to Steelworkers President I. W. Abel in *Brennan* v. *Local 5724, United Steelworkers of America, supra* (Br. App. B 55-57).

[24] Mr. Rooney expressed this same sentiment as follows:

> "We [the Steelworkers] believe that this can best be done if you have responsible local union officers, and we think that local union officers become responsible only through education, and by education I mean through knowing the problems of the union, the local union, attending its meetings, and gradually becoming committed to the idea also that they must be responsible." (Br. App. B 57).

[25] In *Wirtz* v. *Hotel, Motel & Club Employees, Local 6, supra,* 391 U.S. at 505, this Court appears to have viewed with approval a rule requiring attendance at classes in union management as a prerequisite to candidacy. Manifestly, as shown herein, the regular membership meetings are *this* Union's classes in union management.

tract interpretation, arbitration, policy, politics and community affairs. Finally, the local union meeting is the *only* place where members can obtain the necessary overview of all the problems and collective bargaining challenges before the local union.

The Secretary of Labor has also recognized that a direct correlation exists between meeting attendance and the acquisition of knowledge concerning the functions and duties of local union office. The Secretary, who is vested with the major responsibility for enforcing the election provisions of the Act, has published an Interpretive Manual which expressed his opinions concerning the proper interpretation of each section of the statute and serves both as an instructional guide to local unions and as a binding policy on the Secretary's regional officers throughout the country.

At the time of the election herein, paragraph 422.250 of the Manual (App. 55) stated the general principle that qualifications designed to assure that candidates have participated in the affairs of the union would not be considered unreasonable under ordinary circumstances if uniformly imposed.[26] More to the point, the Manual then went on to elaborate certain specific applications of this general principle: Section 422.206 of the Manual (App. 54) declared that "[a] provision requiring a member to have attended at

[26] The court of appeals seized upon the high percentage of members disqualified as constituting a "special circumstance" which cast doubt on the validity of the rule (Pet. App. 10a). But this clearly was *not* the kind of invalidating special circumstance which the Secretary had in mind. In paragraph 422.206 of the same Manual, the unusual circumstance cited was the situation where attendance presented difficulty for many members, e.g., where the local had an extensive geographical jurisdiction (App. 54). Moreover, in a series of letters the Secretary declared that it would be "less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office.)" (App. 50-53.)

least one-half of the regular meetings of his local union for twenty-four months previous to the election before he may be eligible to hold office, is not unreasonable if it is applied fairly and uniformly to all members."

In sum, the Secretary has acknowledged that meeting attendance rules can serve precisely the legitimate purposes which the district court here and the courts in other cases have found the Steelworkers' rule is designed to serve. That purpose is, as we have seen, directly related to the candidates' ability to hold office and serve the membership.

B. The Landrum-Griffin Act Was Not Enacted To Strike Down The Steelworkers' Meeting Attendance Rule.

The LMRDA, more popularly known as the "Landrum-Griffin Act," was enacted in 1959 to eradicate certain intolerable evils which had been disclosed in the McClellan Committee hearings relating to the management of a few unions. Congress made clear its view that "the overwhelming majority" of unions are "honestly and democratically run," and emphasized that the Act was being passed to cure evils found in a handful of unions which had abused their public trust. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess. (1959), page 5.

The most publicized of these evils related to racketeering and gangsterism, and much of the Act is devoted to eliminating these blights. Congress also found, however, that a few unions had so structured their election machinery that it was impossible to remove entrenched incumbents. To cure this problem, Congress enacted Title IV, the "Elections" section of the Act.

Title IV does not purport to regulate every detail of union elections. Indeed, Congress made clear that it did *not* wish to impose any inflexible rules which would hinder diversity in the administration of democratic election pro-

cedures; rather, its object was to enunciate certain broad principles of fairness, within which unions could mold specific procedures designed to accommodate their particular needs and circumstances. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess. (1959), 5-7; *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, 471 (1968). Congress did not intend to "dictate to the Unions what their constitution and bylaws procedure shall be in conducting their elections" or to "impos[e] upon Unions [its] notions of what an election straitjacket should be," 105 Cong. Rec. 6741 (April 25, 1959; Remarks of Sen. Morse).

One of the broad principles enunciated in Title IV was the right of members to be candidates subject to "reasonable qualifications uniformly imposed." No definition of reasonableness was supplied. But in light of the broad objectives of the Act, it is plain that a rule would be unreasonable if its effect was to preclude opposition to incumbent leadership, i.e., if it disqualified the dissident elements of the membership from challenging incumbents.

That is, indeed, how this Court interpreted the clause in *Wirtz* v. *Hotel, Motel & Club Employees, Local 6, supra,* 391 U.S. 492. The case involved the validity of a union bylaw allowing only those who had held prior office in the union to run for higher office. The Court noted that only seven percent of the members had held prior office; that many of these had been appointed by the incumbents to fill vacancies, thus "enabl[ing] the incumbent group to qualify members for elective office by a practice not available to dissidents"; and that in practice endorsement by the incumbent group was necessary to get elected to lower office, thus making it impossible for dissidents ever to qualify to run for higher office.

The Court declared that *"control by incumbents through devices which operate in the manner of this bylaw*

is precisely what Congress legislated against in the LMRDA." 391 U.S. at 505. (Emphasis added.) More generally, the Court stated:

> "Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499.

It is difficult to see how this legislative objective is thwarted by the meeting attendance rule involved in the instant case. The rule disqualifies no one. Every member can qualify by the non-burdensome step of devoting less than two hours, every other month, on the average, to his union's affairs. Moreover, as we have noted, the rule actually fosters the objectives of the Act, for by requiring dissidents to attend local union meetings, it assures that incumbents cannot administer the affairs of the union in an unbridled or arbitrary manner.

In practice, the rule does not entrench incumbent leadership. The record in this case and in others involving the same meeting attendance rule shows quite graphically that in the Steelworkers, incumbent local officers are regularly challenged by and regularly lose to candidates who qualify under the rule. Here, for example, in the ten years preceding the trial, there had been five local union presidents and wholesale changes in other officers. Since the trial, in successive elections, Bernard Frye (complainant in the instant case) first won the presidency of the local and then lost it. Both he and his successor met the requirements of the rule.

The same history of political upheaval is found in the *Local 1299* case where incumbent officers were always challenged, there were contests for virtually every office and on

occasion, entire incumbent slates were defeated. Indeed in that Local, incumbent presidents rarely won (Br. App. A, 3-9).

So, too, in *Local 5724,* in the very election challenged by the Secretary, there were twenty-four candidates competing for nine offices. Four candidates ran for president, four for vice-president, three for financial secretary and six vied for three trustee positions. Several incumbent officers lost in that election including the Local's top executives, its president and financial secretary. The record there is significant for another reason. It establishes that in one Steelworker district (Chicago-Gary) where locals in excess of 1,000 members are common (130,000 members in 225 locals), *only one* incumbent president in such a local managed to win reelection (Br. App. B 45).[27]

As we have shown, the rule neither insulates incumbent officers from challenge nor perpetuates their holding of office. In light of the record in these cases, it is not surprising, therefore, that the Secretary has introduced no evidence and makes no claim that the Steelworkers meeting attendance rule does in fact operate to preclude election contests and entrench leadership. Yet it is these abuses which the LMRDA was designed to curb and which are said to warrant the Secretary's intrusion into the union's internal affairs. *Wirtz* v. *Hotel, Motel & Club Employees, Local 6, supra,* 391 U.S. at 499. The absence of such abuses is thus one more reason why the rule should be allowed to stand, free of the Secretary's "election straitjacket."

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[27] At the trial in the *Local 6799* case, the Steelworkers sought to introduce two exhibits showing that in Steelworker locals generally, the meeting attendance requirement does not preclude contests for union office. That offer elicited an express disclaimer by the Secretary of any contention that the meeting attendance rule operated to perpetuate incumbents. See Appendix at 162-165, 209-212 in *Hodgson* v. *Local 6799, United Steelworkers of America, supra,* 403 U.S. 333.

The widespread incidence of meeting attendance requirements in union elections further strengthens the view that Congress did not intend their abolition. The Supreme Court has noted, with respect to another provision of the Act, that Congress did not intend to outlaw provisions in widespread use, but only those employed by the small minority of unions having undemocratic procedures, *Musicians* v. *Wittstein*, 379 U.S. 171, 178 (1964).

Constitutions of international unions having twenty-five percent of all of America's union members impose meeting attendance requirements as a candidacy qualification for local union office, and in all probability a larger percentage of local unions has such a requirement.[28] It is hardly likely that Congress—having heard no testimony of abuses stemming from meeting attendance rules, and making no mention of them in the legislative history—intended to strike down so widespread a practice by its requirement that candidacy qualifications be "reasonable."

Of course, a particular meeting attendance rule may be so harsh, or its application so unfair, as to have the effect of entrenching incumbent leadership. Indeed, there have been several cases in which such a finding was made.[29]

[28] The twenty-five percent figure was derived from a survey of international union constitutions made by the Labor Department's Director of Research (App. 45-48). An additional seven percent of union members are in unions whose international union constitutions expressly leave the matter to local union option (id.). The remainder of the international constitutions are silent, but, the Secretary's Director of Research testified that some local unions in these internationals have adopted meeting attendance requirements in their *local union* constitutions and by-laws (App. 34). There are 45,000 local unions in the United States (*id.*).

[29] See, *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 244 F. Supp. 745 (W.D. Pa. 1965), *affirmed*, 405 F.2d 176 (3d Cir. 1968); *Wirtz* v. *Local 66, Glass Bottle Blowers Assn.*, 268 F. Supp. 33 (W.D. Pa. 1967); *Wirtz* v. *Local 262, Glass Bottle Blowers Assn.*, 290 F. Supp. 965 (N.D. Cal., 1968); *Wirtz* v. *Independent Workers Union*, 272 F. Supp. 31 (M.D. Fla., 1967).

These cases are so unlike the instant case that, by contrast, they prove the validity of the Steelworkers' rule. Thus the rules were much harsher than that in the present case; they in fact favored incumbents; and their effect was to leave all or virtually all of the incumbents without opposition.

C. The Reasons Cited by the Court of Appeals for Invalidating the Meeting Attendance Rule Are Without Merit.

The court of appeals struck down the meeting attendance rule on two grounds:

(1) The rule is unreasonable because only a small percentage of the members qualified; and

(2) The rule is unreasonable because of the three-year period which, the court says, is apt to entrench incumbents. We discuss each of these grounds below, and show why neither withstands scrutiny.

(1) *The Percentage Qualifying.*

At one point, the court of appeals appears to eschew any test which would hold *per se* unreasonable an eligibility rule under which an "arbitrary percentage" of members failed to qualify to run for office (Pet. App. 7a). Nevertheless, it is abundantly clear from the opinion as a whole, that such a test is precisely what the court applied. Its major thesis was that a rule which renders ineligible a "high" percentage of the members is unreasonable under the Act, without more.[30] In support of this thesis, the court below

[30] "[I]ts effect of severely restricting the number of potential candidates for union office shows it to be clearly unreasonable in this case" (Pet. App. 7a). "Of course, if a very high percentage of the membership is disqualified from seeking union office by a rule, as was the situation here, that fact alone may justify a finding that the rule is unreasonable." (Pet. App. 8a.) The court's endorsement of *dicta* appearing in *Brennan* v. *Local 3911, United Steel-*

placed almost total reliance on this Court's decision in *Hotel Employees*. Indeed it is evident that the Seventh Circuit read the decision as *compelling* invalidation of the meeting attendance rule because of its impact. Thus the court states:

> "Later in the *Hotel Employees* opinion, Justice Brennan observed that because the objective of Title IV of the Act (29 U.S.C. §§481-483) is to insure free and democratic elections, it was plain that a candidacy limitation rendering 93% of union members ineligible for office 'can hardly be a reasonable qualification.' 391 U.S. at 502. Here the meeting attendance rule disqualified 96.5% of the Local Union's membership from office, so that it cannot be deemed a reasonable qualification either." (Pet. App. 7a.)

The Seventh Circuit, we submit, has misconstrued and overextended the reach of this Court's decision.[31] Simply put, the court below failed to read the language it quoted from *Hotel Employees* in the context of the specific rule at issue in that case. There, this Court did not end its analysis

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workers of America, 372 F. Supp. 961, 967 (N.D. Ill. 1973) underscores the point. There, *Hotel Employees* was said to render the Steelworkers' rule invalid based *solely* on the high percentage of members ineligible.

[31] It appears that the lower court's decision is based on an erroneous factual premise as well. Thus the finding that 96.5% were ineligible (Pet. App. 7a, n. 5) is, as we explained at pages 7-8 herein, questionable to say the least. No one knows how many members of this Local were eligible by virtue of a combination of meetings attended plus work credits. The Union had no occasion to check every member's records and the Secretary did not do so either. Work records were checked only for those members who had attended fifteen or more meetings and of these, one member qualified by virtue of nine work credits. If one member was entitled to nine work credits, the chances are that other members were entitled to the same number. Any in this category who had attended between nine and fifteen meetings would thus be added to the twenty-three the court found eligible.

with numbers and percentages. They were but the starting point for a four-page discussion which relied heavily on the fact that the prior office holding requirement in question vested exclusive control of eligibility in the hands of incumbent officers who, by using their appointive powers as they saw fit, decided who could and could not become eligible for office in the local. 391 U.S. at 502-505.

On its face, the prior office holding rule in *Hotel Employees prevented* members from qualifying who wished to do so. As such, it stands in marked contrast to the meeting attendance rule. Another leg in this distinction, stressed by the district court herein, is that compliance with the meeting attendance rule is not in the hands of entrenched leaders but is left to the member himself (Pet. App. 20a). In a real sense, the Steelworkers' rule disqualifies no one (*id*). Instead, members take themselves out of the running as a matter of free, personal choice. *Brennan* v. *Local 5724, United Steelworkers of America, supra*, 489 F.2 at 888-889. Every member *could have* qualified merely by taking the unburdensome step of attending one-half of the meetings. *Shultz* v. *Local 6799, supra*, 71 LRRM at 2823.

The Sixth Circuit in *Local 5724* aptly summarized the difference between the instant case and *Hotel Employees* as follows:

> "The self-evident restrictive character of the 'prior office holding' rule, when accompanied by the numerical effect of drastically limiting the number of eligible candidates for office, justifies the result in *Hotel Employees*. It is, however, erroneous to conclude, as the Secretary contends, that *Hotel Employees* commands blind adherence to a per se theory even where, as here, the rule does not by itself disqualify anyone and . . . does serve legitimate union objectives." 489 F.2d at 889.

Carried to its logical extreme, the legal approach applied by the court of appeals herein would invalidate any meeting attendance rule—*whatever* its duration and no matter how small a share of attended meetings is required—provided that the percentage of members qualifying does not satisfy the court's self-created standard of participatory democracy. (Indeed any qualification is potentially "unreasonable" under this approach even if it asked no more of a candidate than his or her signature on a document stating the candidate's intention to run.) As a consequence and notwithstanding the legitimate purposes that meeting attendance rules were designed to serve, unions would be compelled to apply them at their peril. For unless the "numbers" satisfied the court, the election would be set aside, thereby leaving unions in the untenable position of having the validity of their rules turn upon whether the membership was willing to comply.[32]

Paradoxically, such a result would be in direct conflict with relevant provisions in the Secretary's published Interpretive Manual, which, as we have noted, remained operative even subsequent to the 1968 *Hotel Employees* decision and were in effect at the time the election challenged herein was conducted. In upholding the reasonableness of fifty percent meeting attendance rules of two-year duration, the Manual did not state an exception for cases where only a small percentage attended (App. 55).[33]

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[32] In *Martin* v. *Lodge 636, Boilermakers,* 245 F. Supp. 375 (W. D. Pa. 1963), the district court observed that the rule required attendance at one meeting in each of the five quarters preceding election. Of 175 members, only 14 qualified. The court nonetheless found the rule reasonable, noting that attendance was not burdensome, and emphasizing that to invalidate the rule *"would hold in effect that there can be no attendance requirement whatever in this union."* (Emphasis added.)

[33] The Manual did note an exception for situations where attendance would be unusually difficult, for example, if the location of the union hall was remote from the plant or the members' home. Plainly, no such exception is applicable here.

In late 1966, the Secretary withdrew a lawsuit he had filed against another union alleging that an otherwise reasonable rule *was* unlawful because only a small percentage qualified. In explaining the withdrawal, the Secretary concluded, after "a general review of attendance requirements," that a rule should *not* be invalidated simply because a small percentage actually qualify (App. 50-53).

We believe the Secretary's reasoning in deciding to withdraw the earlier lawsuit against a different union clearly represents the correct interpretation of the Act. We adopt it as part of our argument on this point (*id.*):

> "[M]easuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied."* (Emphasis added.)

We would add but one other point. If percentages are determinative, the International Union is confronted with an unmanageable administrative burden. There is no way it can feasibly determine, in advance, which of its 5,200 locals may apply the rule and which may not. The adoption of any arbitrary percentage figure will leave the Steelworkers no choice but to abandon the rule altogether, at a sacrifice of the substantial values which it believes are served by the rule.

(2) *The Three-Year Period.*

The second reason advanced by the court of appeals for its conclusion is that the Steelworkers' meeting attendance rule, because it spans three years, tends to entrench incumbent leaders (Pet. App. 9a). Moreover, in holding that the reasonableness of a two-year rule does not determine the reasonableness of a three-year rule, the court portrays the latter as fifty per cent "harsher" in the number of meetings which a member must attend and in the time limitations imposed on one's decision to seek office (Pet. App. 10a).

Implicit in the court's conclusion is the proposition that a three-year rule is more restrictive and would render more members ineligible than would a two-year rule. But this proposition is hardly self-evident and there is no record evidence whatever to support it in this case. Since only fifty percent attendance is required, it is possible that more members might qualify under a three-year rule than would under a two-year rule. There is more "make-up" flexibility. More probably, the length of the period has *no* significant impact on the number qualifying.

Actually on this score, the Secretary evidently agrees with us. His expert acknowledged, in another case, that the Department of Labor has no statistical data or empirical information which tends to prove the supposition that more members would qualify under a two-year rule (Br. App. B 58). Indeed the top officials representing the Secretary in discussions with the Steelworkers acknowledged that those interested in union affairs would qualify no matter how long the period while those not interested in union affairs would not qualify no matter how short the period. (See Appendix at 101 in *Hodgson* v. *Local 6799, United Steelworkers of America, supra,* 403 U.S. 333.) Supporting this view are the Sixth Circuit in *Local 5724* and the district court in *Local 1299*. Neither saw a significant difference

between a fifty percent meeting attendance rule covering a two-year period and one spanning a three-year term.

More important, there are no facts showing that leadership is "entrenched" by the three-year rule in this or any other Steelworker local. Indeed the record herein shows otherwise—as does the current round of Steelworker local union elections in which incumbent after incumbent has gone down to defeat, including the president of Local 3489. It is strange that the Secretary—who otherwise shows great interest in impact—has introduced not one shred of evidence showing that the Steelworkers' rule in fact produces the abuse against which Congress legislated.

On the other side of the balance, we note that one of the principal purposes of the rule—to assure membership attendance at meetings and a check against unbridled control of meetings by the incumbent officers—would be lost if the rule were shortened. The term of office is three years. If the attendance period were shortened, there would be no incentive for non-officers to attend at the beginning of a term.

We submit that there is no showing which would warrant treating three-year rules differently from two-year rules under the Act. Indeed a three-year rule is *more* reasonable in the Steelworkers, because the term of office is three years. Finally, since the rule was extended from two years to three by rank-and-file delegate action, without support of the Union's hierarchy, and it was recently readopted by those delegates in the face of proposed changes, it can hardly be said that its imposition is undemocratic.

CONCLUSION

For the reasons set forth above, the decision below should be reversed.

DATED: May 12, 1976

Respectfully submitted,

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APPENDIX A

Testimony of Steelworker Staff Representative John Sadvery in *Shultz* v. *Local 1299, United Steelworkers of America,* 324 F. Supp. 750 (E.D. Mich. 1970), *aff'd in part sub nom., Hodgson* v. *Local 1299, United Steelworkers of America,* 453 F.2d 565 (6th Cir. 1971). Transcript of the proceedings, pages 443-474, Appendix on Appeal, pages 345-376.

JOHN SADVERY,

being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FRANKEL:

Q. Mr. Sadvery by whom are you employed?
A. United Steelworkers of America.
Q. In what capacity?
A. Field representative.
Q. Are you assigned to a district?
A. District 29.
Q. How long have you been a staff representative?
A. Since January 1, 1960.
Q. What did you do before that—by whom were you employed before that?
A. Great Lakes Steel Corporation.
Q. When did you first go to work for Great Lakes Steel?
A. September 28, 1938.
Q. What was your job at Great Lakes before you became a staff representative with the International?
A. Well, I was full time in the Local Union. I held full time office from 1952 until 1960.
Q. When you worked in the plant, what were your jobs?
A. I worked as a scarfer from 1938 until 1944, May of 1944, when I went into the United States Navy in World War II; and I was in the Navy until January 31, 1946.
Q. Did you return?

A. And upon my return, I went back into the plant, back into the scarfing department; and in October of 1947, I had transferred to the boiler house and I worked in the boiler house of Great Lakes Steel Corporation.

Q. Have you, Mr. Sadvery, ever held any office or position with Local Union 1299?

A. Well, —

Q. Start from the beginning?

A. Well, of course, my union activity was prior to coming to 1299. I was a member in, I believe 1937, when I worked at Jones and Laughlin Steel Corporation, Pennsylvania.

Q. What were you a member of there?

A. Of the SWOC, Steelworkers Organizing Committee.

Q. That was before the United Steelworkers of America had achieved its title?

A. Right, that wasn't until 1942.

Q. Now, when you came to — beginning at Great Lakes, however, have you held any positions or offices with Local 1299?

A. Well, I joined the Union before there was a recognized contract between the United Steelworkers of America and Great Lakes Steel Corporation. It was in 1941 that we struck for recognition, and subsequent to striking for recognition, we were recognized by the company and I then became a steward in the scarfing department. That was — that would be some time in 1941, after June.

Q. How long were you a steward?

A. I served in the steward capacity up until —from 1941, up until, actually, 1947, except for the period of time that I was in service; but in 1942, I became a member of the Executive Board as a Guide.

Then I still retained the stewardship in my department. Then in 1943, at that time, we only had one year elections, every year we had an election in the Union. And in 1943, I served, I believe, as a Guard or a Guide at that time.

Then in 1944, is when I went into the service. So I was

absent for that election in 1944, which would have been held in June of that year. I was absent in '45 for that election.

Then, in '46, when I returned, we had a change in '46 to two-year terms as officers, or election for officers and grievance committeemen. And I was nominated as Vice-President in the May meeting of '46 and I was elected as a Vice-President from 1946 until 1950.

Q. What happened in 1950?

A. In 1950, our whole slate was defeated—the entire slate was defeated. We were the incumbents for four years, except for some changes in office during that period of time.

And the Treasurer of the Local had resigned his position, some six months — within a six-month period.

Q. The Treasurer who won in 1950?

A. Who won in 1950, off of the Back to the Membership Slate. And a vacancy was declared and was put up for election. And I run for this job as one of four individuals. There was three others in this hotly contested race for Treasurer. And I came out on top in that election, in fact, I got more votes than all three of my opponents put together.

And I served for eighteen months in that capacity as Treasurer of the Local.

Then, in 1952, I ran for full time grievance committeeman. That was the Vice-Chairman's job on the Committee for Good Leadership Slate at that time. And I won that election, incidentally, for that two-year term by some nine hundred votes.

Then I run again in 1954, and I was —

MR. BARNARD: Your honor, I don't know if Mr. Frankel intends to connect this up, but I don't quite see the relevancy of going through all of this background.

THE COURT: Mr. Frankel.

MR. FRANKEL: I intend to connect it up; number one, I am going to show that this witness is in fact a far more expert than Mr. Lahne whose testimony is already in the record on how people find out about contracts.

Mr. Sadvery has served in this Local and been connected with it for thirty years, something like that, and he knows more about it than —

MR. BARNARD: I am going to —

MR. FRANKEL: We are also going to go through with him on elections and show when incumbents get beat—the fact has already come out that an entire incumbent slate was defeated — and there are a lot more instances on this. I am going to go through with that. I think it would be very relevant because the Government contends that our meeting attendance rule entrenches candidates, entrenches incumbents, and I am going to show that it doesn't.

MR. BARNARD: I can stipulate to Mr. Sadvery's background and his knowledge of the United Steelworkers.

With regard to going back to the elections in the '50's, this is an election which was held in 1967, and, that part, I don't see is relevant, as to the '50's and the '40's.

MR. FRANKEL: We will get to the '60's too.

THE COURT: Well, the court will allow him to proceed.

You were at the point where you had finished the 1950 election. You were saying you won the election by nine hundred votes.

THE WITNESS: In '52.

THE COURT: In '52.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q. Did you run again in 1954?

A. Yes, I run in '54 for, I believe, the Chairman of the Grievance Committee at that time — either that or Vice-Chairman — I forget, because we had some changes; and I had won against my opponent by some twelve hundred votes.

And in 1956, I run for Chairman of the Grievance Committee and my opponent at that time said — well, I know that you are a strong candidate but I am not going to —

MR. BARNARD: Objection.

A. — let you run alone.

THE COURT: Just a minute. The court will sustain the objection.

Q. Continue.

A. All right. Well, I won it by some nineteen hundred votes. And then —

Q. But you did have opposition?

A. Well, I sure had. I had to work.

In 1960, I mean, in 1958, I then headed the Unity Slate as President and I run for President of that Local Union in 1958. And with strenuous opposition from the opposition party. And, of course, I won that by nine hundred votes.

And then I served in that term for some eighteen months; and, then, Thomas Shane, District Director at that time, had asked me to accept an appointment as a field representative for the United Steelworkers of America, which I did.

Q. Now, since you became a field staff representative of the Steelworkers in 1960, have you continuously serviced Local 1299 until today?

A. That has been my life since almost thirty-two years.

Q. Now, Mr. Sadvery, you have testified concerning some slates. Can you tell us what the practice is within the Local Union concerning slates?

A. Well, since the recognition strike in '41 and the establishment of a contract between the company and the Union, there has always, always been slates, opposition factions, in this Local Union. There has never been a time that there hasn't been opposition of the offices.

Q. All right, now, if you were to break it down, would it be fair to characterize the slate, whatever their names are, as one being the in group, composed substantially of incumbents, and the other an out group?

A. Well, yes, but also incumbents also cross over slates.

Q. In other words, sometimes incumbents will go from what is the in slate and become candidates on the out slate?

A. That happened in 1950; that happened in other elections that incumbents cross over and you have a crossover. It is not always the ins, but, normally, it is the outs that is trying to get the ins out.

Q. Now, Mr. Sadvery, in these slates, would you tell us whether or not there are full slates of opposites to the incumbents on slates, or —

A. Well, to my knowledge, other than maybe one or two minor jobs that has ever occurred, that there has been always opposition, in other words, you may have a lack of enthusiasm for somebody to run for a Guide's job — he may not want to run for it, but the President, the Vice-President, the Treasurer, the Financial Secretary, the grievance committee there is always — there has been strenuous opposition in those jobs.

Q. Now, beginning in 1941, could you tell us some examples of incumbent officers who have lost elections?

A. I sure can, because I supported Mr. Fifer in the '41 — the first election since there was a contract, and I went down to defeat with Mr. Fifer in that election; and Stanley Cook had knocked Mr. Fifer out, plus the whole slate, the whole slate was defeated and Stanley Cook's slate come in.

Q. That was in 1941?

A. That's right.

Then in 1942, we knocked Mr. Cook and his slate out; and in '43, we were sustained again in that election. And I was a Board member in '42 and '43.

Now, in '44, naturally, I went in the service so — but I received a newspaper and I know that there was a change of officers because Lou Decker did not choose to run at that time and Jack Mahan became the President. So he was the President in '44 and part of '45, while I was in service, and

Fritz Boomer then took over as President when Jack Mahan resigned to take the grievance man's job.

Then in '46 is when we — I came back from service and Fritz Boomer, who was the President, we met on Glenwood Street and the caucus defeated Fritz Boomer for President and he was not — he then chose not to run, to try to buck the caucus.

Q. He was the incumbent who lost in his own caucus; is that right?

A. Yes, sir.

Q. The caucus put up another candidate for President?

A. Well, both sides had caucuses since 1941, so you had to make the caucus or you couldn't win. There was only one man the I ever knew that won as an independent.
You just don't buck the caucus.

THE COURT: Who was that man who won?

THE WITNESS: Eddie McNamara. That was in 1948.

THE COURT: Thank you.

Q. (By Mr. Frankel, continuing): Now, you have already testified that in 1950, the entire, generally speaking, incumbent slate lost?

A. Right.

Q. Then in '52, in turn, the entire what was then incumbent slate lost?

A. In '52 — you see, in '50, I told you, the incumbent had crossed slates, so we were defeated — we were wiped out except these two incumbents that had went to the opposition. But in '52, when we formulated our slate, these two incumbents were knocked out of their jobs because we had taken all of the jobs in the Local Union, including the division grievance job.

Q. Who was the President in '50 that was defeated?

A. LaVerne Shank, — Charles Younglove was defeated in '50 and I was the Vice-President, one amongst the rest that were defeated.

Q. Then did Mr. Younglove win in 1952?

A. Charles Younglove won as President in 1952.

Q. Now, how about thereafter, have incumbents lost thereafter?

A. Well, in — I am trying to take the years as they went up.

Well, for sure in 1960, the incumbent President, Martin Tarlowicz, was —

THE COURT: How do you spell that, Tarlowicz?

THE WITNESS: (Spelling) T-a-r-l-o-w-i - - -

THE COURT: i-c-z?

A. — i-c-z, you are right.

Martin Tarlowicz was defeated as an incumbent President; George Kenyon was defeated as incumbent chairman of the grievance committee.

Q. Now, you testified before that only one independent has won. However, do independents still run?

A. They try.

Q. Run for office?

A. They try. It is pretty hard to win. You got to be well known, you have to have a lot of activity in that Local to make it.

Q. It is kind of hard to reach nine thousand members without support?

A. That's right. I know I would never try it.

Q. Now, in 1960, do you recall how many candidates there were for Vice-President?

A. I believe there was three — I'm not sure, but I believe there was three.

Q. Now, by candidates, I am speaking of people that appeared on the ballot?

A. Right. I think there was three.

THE COURT: Keep your voice up, sir.

A. Oh, pardon me.

Q. Now, after the 1962 election, there was an administrator appointed; is that right?

A. Yes, sir.

Q. Then in 1965, the Local Union held elections again?

A. Well, the administrator released the Local back to the members in June, which was to take effect, actually, in July of that year, '65.

Q. Now, Mr. Sadvery, during all these elections, did the Union have some meeting attendance rule?

A. During all of these elections?

Q. Yes. You were in all of these elections?

A. Oh, yes.

Q. Was the rule when there were two-year elections, there was a two-year rule, like our three-year rule now?

A. One year, the one year, I believe, was six out of twelve; then we went to two and you had to have twelve out of twenty-four; and I think that took us back to '46; then in, I think, '67, we went to the three-year term, by — this, incidentally, was by a constitutional enactment by the convention.

Q. This was in 1967?

A. This became eighteen out of thirty-six.

Q. So, in all cases, the measuring period is equal to the term of office?

A. Yes, sir.

Q. Now, Mr. Sadvery, can you give us a brief description of the plant layout or the plant — the layout of the plants?

A. Well, the plant in general is segregated into three parts, which consist of Great Lakes Steel Corporation, that is, the blast furnace division or Zug Island; and Zug Island consists of four huge blast furnaces, coke ovens, coal handling, the ore docks, the sinter plant.

Q. That is (spelling) s-i-n-t-e-r?

A. S-i-n-t-e-r. And the transportation and mechanical and electrical departments of that area.

Now, that would be north of the main plant, some mile and a half, maybe two miles.

Q. Briefly, what is in the main plant?

A. In the main plant is the eighty inch rolling mill — that's the rolling mill — and the slab yards; and then, going from north to south, is the maintenance shop, the open hearths, the soaking pits, the finishing departments, the scarfing yards, the cold mill and the B. O. P., electric furnaces, and, again, transportation and mechanical and electrical areas.

Then, the Michigan Steel Division, which lies some southwest of the main plant, consists of heat treat, storage and coil storage for shipment to customers of coils; and that's about it.

Q. All right, now, Mr. Sadvery, you — did you service the Local during the period of the administratorship?

A. Yes, sir.

Q. Between '62 and July of '65?

A. Yes, sir.

Q. Did you work closely with the administrator?

A. Yes, sir.

Q. Now, you were aware that in 1965, in the Local Union election, the administrator conducted the election without using — or waiving the Union's meeting attendance requirement; —

A. Yes, sir.

Q. — is that correct?

A. Yes, sir.

Q. Do you know why he did that?

A. Yes, because he didn't have that many meetings, for one thing. He didn't have that many meetings, for one thing. He didn't have — the meetings were very infrequent and there was no motions, no seconds, no order of business other than what he wanted to conduct. He was the sole autonomy of that Local from '62 to '65.

Q. Do you know whether or not meeting attendance records were kept during this period?

A. Absolutely not.

Q. Now, Mr. Sadvery, have you attended the regular meetings of Local Union 1299?

A. You mean since its inception?

THE COURT: Keep your voice up, sir.

THE WITNESS: I'm sorry.

Q. Did you attend the meetings regularly?

A. I have missed very few.

Q. How many did you miss?

A. Well, since '41, I probably could count them on my two hands.

Q. All right. Mr. Sadvery, tell us what goes on at those meetings?

A. Well, in the general meeting, as actually spelled out in the Bylaws, you naturally have formalities that you go through, such as the pledge of allegiance, the reading of the minutes, communications, but, in the meetings, the general meeting is brought about for the basis of not only trans — to bring about the business, the administrative part of the business of the Local Union, but there, there is reports given that cannot be given only through a department, in other words, by the calling of this general membership meeting, the reports are given on a broad basis to these nine — and at one time we had eleven thousand eight hundred members. It is given on a broad basis to the general membership. Now, you have —

Q. What kind of reports are we talking about?

A. Well, you have first the report of the Financial Secretary and the Treasurer. Well, the membership then knows the disbursement of their monies, the income that comes in; they approve the spending of the money and sometimes they reject the spending of the money.

Now, those reports are given, normally, first.

Then you have reports of the President. The President's report can be detailed because his responsibility is great. He is, first, number one, he is the top administrative officer in the Local. He is ex-officio of all committees, and when I am saying ex-officio of all committees, he is the ex-officio of the grievance committee which is a huge committee, not only the full time officers, but the divisional officers, some eleven divisions, which is ten divisions plus the blast furnace division; and he is head of the safety committee, the construction committee, the convention delegates, the county delegates, the Steel Council delegates — this man has a huge responsibility both in that area as well as in community services, whether it be talking with the mayors of the various cities about pollution, about civil rights, or with civil rights committees, different committees, his job is tremendous so the report that he reports on is detailed, which this then emanates from him and is able to go to the general membership as a whole because there is a cross section of people that come into this general meeting.

THE COURT: Excuse me. It is three o'clock and I have an attorney I have to swear in for admission to the local Federal Court.

We are stopping off where you are detailing the responsibilities of the President so that we will know where we are when we resume.

You may step down.

(Witness leaves stand.)

THE COURT: As it relates to this matter, we are in recess, but I will take up this other matter at this time.

(Whereupon a recess was taken, after which the following ensued:)

MR. KOVINSKY: If the court please, may I approach the bench for a moment?

THE COURT: Surely. Mr. Barnard, all counsel.

(Bench conference.)

(Witness resumes stand.)

Q. (By Mr. Frankel, continuing.) Mr. Sadvery, you were describing the President's report at the meetings?

A. I think I was describing, oh, I think, yes —

THE COURT: The awesome responsibility, yes.

A. And the responsibility — one of his responsibilities is, he heads up the safety committee, actually, under Section 14 of the agreement. He holds quarterly meetings with the company along with the safety chairman.

Now, his primary purpose is to back up the play and maybe, wherever there is a fire that occurs, say, arguments between management and the Union, he is — he normally comes into play to render assistance to whatever committee it is necessary to give assistance to.

Q. Now, at the meetings, does he report on his activities with the safety committee?

A. He, amongst many of the reports that he gives, he will almost touch on all the subject matters, safety, construction, grievances, discussions that he has had with the company concerning various activities.

Now, in addition to this, he is assigned other duties by the Executive Board, whenever necessary.

Now, he is also — actually heads up the negotiating committee during contract negotiations. Our negotiating committee is made up of the divisional grievance man in a full time representative and naturally, him being the leading officer in the Local, he heads up this committee in discussions with the company, although in negotiation, the committees may be broken up into small segments because of the complex discussions that may be going on. But he may be going from one group to the other during these discussions.

Now, this is mainly, probably the bulk of his activities. And then you will have reports in the Local Union meetings, like the Recording Secretary, who is also an officer of the Local Union, but is charged with the responsibility of administering the S. U. B. agreement; he is saddled with the responsibility of the pension agreement; he is saddled with the

responsibility of administering the insurance agreement; and also does occasionally get into discussions on the extended vacation. Now, —

Q. S. U. B., that refers to supplemental unemployment benefits?

A. Yes, that was negotiated.

All right, now, what happens there is that he will give reports in the general meeting on these subject matters and changes and then, say, settlements that have been made.

Q. All right, now, do you make any reports as staff representative at the meetings?

A. Well, there is more reports than this by those who are primarily charged with the administrative end and also negotiating — and with the agreement between Great Lakes Steel.

Now, you have reports by the full time grievance representatives, of which there is three. That is, the first, second vice-chairman, first vice-chairman, and the chairman. Now, they go into detail on, actually, the contract. They report on grievances settled; they report on discharge cases; they report on many, many different problems that is a result of the contract or interpretations in respect to changes that may come as a result of the discussions with the company.

Q. Now, are these grievances or do some of these grievances on which they report involve contract interpretation?

A. Oh, yes, definitely.

Q. Is there a contract in effect between Great Lakes Steel and the United Steelworkers?

A. Yes, sir.

(Whereupon Defendants' Proposed Exhibits 25, 26, 27, 28 and 29 were marked by the reporter.)

(Mr. Frankel shows proposed exhibits to opposing counsel.)

Q. Mr. Sadvery, I hand you a document which has been marked for identification as Defendants' Exhibit 25 and ask you whether that is the contract in effect between the Great Lakes Steel Corporation and the United Steelworkers of America?

A. Yes, sir.

Q. That is the agreement presently in effect?

A. That is the present agreement that was negotiated August 1, 1968.

Q. Now, there was a contract substantially similar to that in effect in 1967, was there, with some changes that were negotiated, but the subject —

A. The '65 agreement.

Q. '65. That was in effect in '67?

A. Right.

MR. FRANKEL: I am going to offer Defendants' Exhibit 25 — is that number 25?

THE COURT: 25.

THE WITNESS: 25.

MR. BARNARD: 25.

MR. FRANKEL: Your honor, that is not in our list of exhibits, however, since counsel — since the Government has broadened its list, I feel I ought to be permitted the same opportunity.

MR. BARNARD: I have no objection to Mr. Frankel broadening his list. I have an objection to Exhibit 25 and I would suspect that I will have the same objection with the remaining.

I think this is going a little far afield in the examination as well as some of these documents. I just don't consider them relevant.

THE COURT: Mr. Frankel.

MR. FRANKEL: Your honor, we are offering these documents to establish the sort of a complex job it is to be a Local Union officer at this time and what sort of a complex document it is that they have to deal with and to interpret

and apply to nine thousand members in a complicated industry.

This is in support of our position that the most effective way that you can become an officer of the Union is to attend meetings where these contracts and the various complicated agreements are explained and the grievances are discussed and that helps to qualify for membership and explains why we have a meeting attendance requirement.

THE COURT: Well, the court will allow it in evidence, subject to your objection, Mr. Barnard.

Now, what other exhibits do you have — can the court rule on them all —

MR. FRANKEL: Yes.

THE COURT: — for the purpose of saving time?

MR. FRANKEL: Exhibit 26 is entitled Supplemental Unemployment Benefit Plan.

THE COURT: Just a minute. You call it S. U. B.?

MR. FRANKEL: S. U. B.

THE COURT: All right.

MR. FRANKEL: Exhibit 27 is the pension agreement.

THE COURT: Exhibit 27 is the pension.

MR. FRANKEL: Yes. Exhibit 28 is entitled Savings and Vacation Plan, referred to as SVP.

Exhibit 29 is the Program of Insurance Benefits, described as P. I. V.

I will offer 26, 27, 28 and 29 into evidence.

THE COURT: Mr. Barnard, you have an objection to each of these on the same grounds?

MR. BARNARD: On the same grounds.

THE COURT: Very well, the court will receive 26, 27, 28 and 29 into evidence, subject to your objection, Mr. Barnard.

Mr. Frankel, I don't think it will be necessary for you to go into each — into the substance of each one of these exhibits.

MR. FRANKEL: No, I don't intend to, your honor, just briefly to describe what they are and that's all.

MR. BARNARD: They speak for themselves, your honor.

THE COURT: The court has an idea of what these exhibits are and their substance, maybe not as to the specifics.

MR. FRANKEL: The only other thing I wish to show your honor is the extent to which they apply to the members of the Steelworkers Union. That's the only thing I wish to develop with respect to those and it will take a couple of questions.

Q. (By Mr. Frankel, continuing.) Mr. Sadvery, Defendants' Exhibits 25 through 29, the contract and the various benefit supplements, are these agreements substantially the same for all eleven basic steel companies with whom the Steelworkers negotiate as a group?

A. Substantially the same except that some sections of the contract might vary, such as seniority or maybe the vacation clause or the overtime clauses.

Q. But the benefit clauses are essentially the same?

A. They are the same.

Q. And those basic eleven companies are U. S. Steel, Bethlehem, J & L — Jones and Laughlin — Republic Steel, Youngstown Steel — Youngstown Sheet and Tube—Armco, Allegheney Ludlum, Colorado Fuel and Iron, Pittsburgh Wheeling Steel Corporation, National, of course — did I forget any?

A. I think that's eleven — I think its eleven — sounds like eleven.

Q. Now, in addition to these eleven steel companies, there is a group of companies entitled Me-Too corporations?

A. Such as McLouth Steel.

Q. Such as what?

A. McLouth Steel Corporation, Detroit Steel.

Q. Now, these companies have substantially the same contract and substantially the same benefits as in Defendants' Exhibits 25 through 29?

A. Well, they usually wait until we negotiate in the eleven steel companies and then they apply those benefits or whatever has been negotiated to the type of mills that are called Me-Too, such as McLouth or Detroit Steel.

Q. That is why they are called Me-Too?

A. That's right.

Q. All right, now, can you give us an estimate of how many members of United Steelworkers are covered by these agreements?

A. In the basic steel?

Q. Yes.

A. Oh, something in excess, probably, of four hundred thousand men, employees.

Q. Now, you testified that the Recording Secretary makes his — has something to do with the administration?

A. Yes, he has that responsibility.

Q. Specifically, what does he do?

A. In the administration end of it?

Q. Yes.

A. Well, he records the minutes of the general meeting.

Q. Specifically, what has he to do with the contracts and benefits?

A. Oh, with the contract items?

Q. Yes.

A. Well, —

THE COURT: Just a minute, Mr. Sadvery.

(Pause until fire siren subsides.)

THE COURT: You may proceed.

A. Well, he has an office in the Local 1299 headquarters, which he receives at this office various members of our Local Union on these subject matters such as S. U. B., the pension

or insurance or even other matters that pertain to the Local Union. Now, if they are in the line of complaints, he will take those complaints up.

Q. With the company?

A. With the company, yes, he will either meet with the head of workmen's comp, of which there is no book on that, but which will come in primarily under safety, as far as I am concerned. He will probably meet with the workmen's compensation people at Great Lakes Steel. He will meet with Mr. Ecklund of the insurance department concerning insurance.

Then, in addition, he will meet with the Blue Cross and Blue Shield people to bring about, say, compliance with the agreement.

Also, in addition, he will talk to John Robinson or probably Bob Beerma on —

Q. Who are they?

A. They are involved in the pension department.

Q. For the company?

A. For the company, his counterpart, as far as the Local Union.

Q. Does he report on his activities to the Local Union?

A. Yes, sir.

Q. At the membership meeting?

A. Yes, sir. Then, in addition, he will write for, if he has, say a knotty problem he has run into, he may have a discussion with myself as an International representative, or he may write to Pittsburgh and ask for an interpretation from our pension and insurance offices, such as John Tomichael or Bernie Greenberg.

Q. Sometimes he writes to the legal department, too, Mr. Sadvery?

A. And the legal department, as far as the administrative. But he has his hands full.

Q. Now, what reports do you make at the membership meeting?

A. Well, one of the reasons that I am in the meeting, number one, I am a member of that Local and have been a member practically from its inception; and my duties is to see that the Local Union complies with the Constitution of United Steelworkers of America; and, in addition to the duties, the contracting party, being the International it is part of my responsibility to see that the contract is lived up to.

Now, there may be questions of interpretation arise from the floor that I am asked to interpret, a specific section of the contract, such as the seniority section 13, or Section 14, safety and health, Section 2, local working conditions, or even the management clause, Section 3. Those questions may arise from the floor pertaining to that agreement and it is my responsibility, because of the fact that I have been one of many individuals from that Local, officers, grievance committeemen, who have negotiated that agreement, it is my responsibility to interpret that agreement.

Now, in addition to that, it is my responsibility to process grievances that are in the third step of the grievance procedure that now has left the hands of the Local Union directly and come into the International step. I process those grievances, whether they be grievances concerning discharges, penalties, or whether they are on incentive or whether they are on hours of work or local working conditions or what have you, the whole agreement, including S. U. B. and insurance and what other problems may arise.

Q. Who processes the grievances up to the third step?

A. The Local Union grievance committeemen, which would be either the vice-chairman or chairman and many times even the President will sit in with them.

Now, on my level, I will normally have the chairman of the grievance committee that will sit with me and at times the President of the Local will come and sit and partake of the discussion.

Now, I am to report on these grievances, those that have been settled, those that have been granted, those that have been withdrawn and then those that may be going into arbitration. And if we have arbitrated cases, then I report to the general membership the results of an arbitration case and then lend emphasis to it or what the interpretation of that arbitration agreement is.

Q. Do you read or explain your interpretation of the decision?

A. I read and explain, right.

Q. Now, during this questioning which arises, is there division among the members as to the proper interpretation of a particular clause or section of the agreement?

A. There is very heated debates that occur on the floor because the plant being as broad as it is, one department may be applying, say, a portion of the contract a little different than some other one; and then the arguments start and there I may be called on to give an interpretation and then try to bring them into line. But there is heated discussion over application of the contracts.

Q. Now, from the Union standpoint, is there advantage or disadvantage to have everybody applying the contract the same way?

A. Well, the horse can't go two ways. He should be going one way. And this is what we stress, that there has to be uniformity in application of our agreements, whether they be the general contract or whether they be a local working condition that is applied under Section 2 of our agreement.

Q. Now, do you make any other kinds of reports, Mr. Sadvery, concerning the International?

A. Well, we may make reports on air pollution with attending seminars, different seminars, arbitration seminars, discussions with the various committees, whether it would be the E. C. C. O. or whether it would be the —

Q. You mean E. O. O. C.?

A. That's it, or the NAACP or different, even the Red Cross or United Foundation, those are — those things are

manifold, there are so many of them that have to be discussed because there is times in the discussion that a request may be for the Local to donate monies to these organizations to help them out.

Q. Now, Mr. Sadvery, do you from time to time receive interpretations from the International Office in Pittsburgh regarding the contract or any of its benefit agreements?

A. Oh, yes, yes, yes.

Q. What do you do with them?

A. Well, naturally, I try to study them and get the intent out of them that I can before I discuss with the officers and then into the general meetings so that we all understand what it is so that we can apply these new interpretations uniformly.

Q. Now, what about policy directives of the International?

THE COURT: Mr. Frankel, do you think it is necessary to go into specificity as it relates to each one of these? The court is familiar with the responsibilities of the various officers of locals.

MR. FRANKEL: Your honor, I am merely trying to show how much you learn at the Local Union meetings.

THE COURT: The court knows about the responsibilities of the field representatives. I know it is a responsibility which is momentous and very complex.

MR. FRANKEL: All right, your honor.

Q. Mr. Sadvery, over the years, has the Local Union ever had occasion to hold morning meetings for employees who work on the afternoon shift and could not attend the meetings by reason of working?

A. Yes, sir.

Q. How many times have you tried that over the years?

A. I would say that it was tried under at least three presidents.

* * * *

APPENDIX B

Excerpts from the testimony of Bernard Kleiman, Steelworker General Counsel, John Rooney, Assistant to Steelworker President, I. W. Abel, and Herbert J. Lahne, Director of Research of the Office of Labor Management Policy Development of the Labor Management Services Administration of the Department of Labor, in *Hodgson* v. *Local 5724, United Steelworkers of America,* Civil No. 68-30 (S.D. Ohio, filed November 22, 1972), *aff'd sub nom, Brennan* v. *Local 5724, United Steelworkers of America,* 489 F.2d 884 (6th Cir. 1973). Transcript of the proceedings before the district court, pages 6-13, 20-22, 24-40, 43-44, 47-54, 62-68, 76, 79-80, 91-92.

[6] BERNARD KLEIMAN

Called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. COHEN:

Q. Mr. Kleiman, will you give us your full name, please?

A. Bernard Kleiman (spelling) K-l-e-i-m-a-n.

Q. Your address, please?

A. Home address?

Q. Both.

A. Home address is 1145 Braeburn (spelling) B-r-a-e-b-u-r-n Avenue, Flossmoor (spelling) F-l-o-s-s-m-o-o-r, Illinois. My office address is 10 South Lasalle Street, Chicago, Illinois.

Q. Are you employed by The United Steelworkers of America?

A. Yes.

Q. Could you tell us what position, please?

A. I am General Counsel of the Union.

Q. For how long a period of time have you held that position?

A. Since June of 1965; should be something over seven years.

Q. Prior to becoming General Counsel, did you, as a private practitioner, have any relationship, that is a lawyer-client relationship, with the United Steelworkers of America?

A. Yes. Prior to becoming General Counsel, I was District Counsel for District 31 of the United Steelworkers.

Q. For how long a period of time was that?

A. I was District Counsel from December of 1960 until I became General Counsel in June of 1965, and even prior to December of 1960 I was part of the firm that was the District Counsel of District 31.

Q. What is that relationship with the United Steelworkers of America?

A. That is the district that encompasses Chicago, Gary, and a few counties around Chicago, around Cook County, Illinois, and a few counties to the east of Gary, Indiana. It is really sort of a district around the southern tip of Lake Michigan.

Q. Mr. Kleiman, could you briefly describe for us your duties since becoming the General Counsel of the Steelworkers in 1965?

A. One of the General Counsel's functions would be, I suppose, to be the chief legal advisor for the officers of the International Union, and in addition as General Counsel I would basically supervise the Union's legal activities throughout the Union, which contemplates supervising litigation, advising the various people who work for the Union, the people in the International Headquarters, and the staff representatives and the directors, and advising the executive board in the various legal matters that arise, and directing the full-time legal personnel as well as sort of supervising the

various district counsel around the United States and in Canada.

Q. When you refer to the fact that you were the chief legal advisor for the International Officers, who comprise the International Officers of the Steelworkers' Union?

A. The three International Officers are the International President, Mr. Abel; the International Secretary-Treasurer, Mr. Walter Burke; the International Vice President, Mr. Joseph Malony. Then the International Office has an executive board. That's composed of 24 district directors from various geographical areas of the United States and Canada.

Q. As to that group, which includes the executive board and the three International Officers, are those all elected positions?

A. Those are all elected positions, yes.

Q. Elected by referendum vote?

A. Elected by referendum vote, yes.

Q. Mr. Kleiman, could you briefly describe for us, within the structure of the United Steelworkers of America, the relationship between the local unions and the international parent body?

A. The relationship?

Q. Yes.

A. The relationship was established fundamentally by the International Constitution. The International Union is the bargaining agent for all of the members, all of the million-plus members in the United Steelworkers of America, and it is the contracting body for all of these members. The International Union supplies various services for these members and for the local unions to which the various members belong as well.

The local unions are separate legal entities in law which have, however, substantial responsibilities and obligations under the constitution to the International Union and over which the International Union has certain control, and as

to which the International Union has certain regulations and requirements that all local unions must comply with.

Q. Approximately how many local unions are there?

A. Approximately 4,000.

Q. Am I correct in saying that the International Constitution and by-laws is applicable to each and every one of those local unions?

A. Yes.

Q. When you made reference to the fact that the International Union is the certified bargaining agent for collective bargaining purposes, what procedure is followed in terms of the establishment of local unions after this bargaining agency is set up as a matter of law?

A. An unorganized group of workers would be organized by the International Union, and the International Union would be certified as the bargaining agent. After that certification takes place, the International Union will establish and charter a local union or may put that group of individuals into an existing local union in somewhat rare circumstances, which that would be called an amalgamated local union, which would include workers in more than one bargaining union, but the typical situation would be that these unorganized workers would become part of a local union which is chartered, created by the International Union under terms that require contractually, constitutionally that the local union comply with these regulations that are applicable to all local unions.

Q. Once having been certified as a local union of the International, with respect to the procedures or requirements of the International Constitution concerning the nomination of local union officers and the election of local union officers, are these International Constitutional provisions applicable to each and every one of the local unions?

A. They are.

Q. Would you describe or could you describe for us whether or not you would consider the Steelworkers Organ-

ization a centralized one in terms of the relationship between the International and the local, or one in which a great deal of [autonomy] exists?

A. I would describe the relationship between the International Union and the Local Union as quite centralized. In terms of the International Union and in terms of my judgment and knowledge of other unions, it would be certainly more centralized than most, and certainly one of the more centralized.

Q. Earlier in your testimony, Mr. Kleiman, you made reference to the concept of the International Union providing certain services to the local unions that are chartered affiliates. Could you give us a brief description of the kinds of services that the International Union provides?

A. Yes. The International Union fundamentally, on sort of a day-by-day and constant basis, services local unions through staff personnel called staff representatives who are under the direction incidentally of these district directors that I mentioned earlier. The staff personnel, each staff man is assigned a number of local unions; perhaps five, six, seven, eight might be the average, depending on the size. In some cases a staff representative will have only one local union, if it is very large; or, if it is very large, there might be two staff representatives for one local union.

The staff representative really provides the day to day service that the International provides. The staff personnel are required to be at every local union meeting unless some exigency prevents that.

In addition the Internation Union provides a certain amount of legal service. It provides service in the specialized areas of bargaining and contract administrations, such as pensions, insurance.

The International establishes, through staff personnel, sometimes through legal personnel, procedures for arbitrating grievances that have arisen from its shop environment. The International Union has a Civil Rights Department

and therefore provides civil rights information, service civil rights expertise to the local unions.

Q. Let me just interrupt you to ask you this: When you are referring to the International providing these services, where are these people who provide this technical assistance located? Where do they work out of?

A. Most of the International departments are centralized in Pittsburgh, those principal departments being civil rights, pensions, insurance. There is a contract administration department that assists in bargaining generally and assists in handling of grievance arbitration.

There is an office and technical department that provides special expertise to office and technical bargaining units out of the Pittsburgh office. The International also has a newspaper that goes to each member of the Union, that is through a department that is headquartered in Pittsburgh, but has subdivisions in its regions, one in Chicago, one in Washington, one on the west coast, one in the south, but most of these International departments are headquartered in Pittsburgh.

As I indicated earlier, the real servicing is done by the staff personnel who are located out in the districts in the geographic areas where the members are located, and by and large these technical services are supplied to the staff which in turn provides on a one-to-one basis with the local union officers, and the local union members at the place of work.

Q. As to these staff representatives who you have described as being situated in districts located throughout the country, are these staff representatives employees of the International Union?

A. Yes. The staff representatives are full-time employees of the International Union.

Q. As a general rule, under the collective bargaining agreement between the Steelworkers and a variety of corporations, what function does the staff representative play in the grievance arbitration procedure?

A. In the grievance arbitration procedure, the staff [13]

* * * *

[20] less frequently than monthly as the case may be.

Q. (By Mr. Cohen) Could you give us an example of what you mean by a standing committee in a typical local union?

A. Under the Constitution, local unions are required to have certain committees. They are required to have a civil rights committee. They are required to have a Workmen's Compensation committee. Possibly others that don't occur to me.

Almost every local, in addition, has a safety committee. Almost every local has an incentive committee, if it has incentives. This is what you might call the industrial engineering committee, much more technical and complicated than the term might indicate.

Most of them have a welfare committee. Most of them have some kind of a political action committee. Most of them have a community services committee which gets to the relationship between the local union and the community, and then of course probably the most important committee of all in every local union is the grievance committee which deals really with the enforcement of the contract per se.

Q. Each of those committees are called upon on occasion or on a monthly basis in some instances to give some report?

A. That is correct. There are others too that just don't occur to me; yes.

Q. Based on your observation, are those committee chairmen, or whoever is making the report, available for questions from the general membership present at such a meeting?

A. Yes. I think a lot of the local unions, it is obligatory.

Q. Does the staff representative, who you have testified about previously, have a function or a role to play insofar as the local union membership meeting is concerned?

A. He does.

Q. What would that be?

A. As I indicated earlier, one of the job requirements of the staff representative is to attend every local union meeting, and the purpose of that attendance is to communicate what is happening with respect to the International Union, the Headquarters, to report on items of information that he has been asked to report on; to report on his activities obviously in servicing the local unions; that is his fourth step and arbitration handling; to report—the staff representative, incidentally, is also the chief negotiator in most local unions, so obviously it is a matter of great interest as to his report about the negotiations during collective bargaining time—and he is also there to hear, as part of the whole internal communication system, what the local union membership is thinking, and to communicate that back to his superiors and to have sort of a flow and interchange of information.

So, he is a communicator; he is also sort of a technical—the month-to-month technical expert, because he should know more about—and normally knows more about the various technical aspects of the collective bargaining relationship than any individual member of the bargaining units.

Q. When you refer to the rank and file communicating with the staff representative, are you talking essentially of International Union matters that they are concerned about?

A. Yes. As a matter of fact as the Constitution indicates there is a place on the agenda for, I think it is stated as the report of the organizer, but it's the organizer, the staff representative, and there is a place calling for his report.

Q. I take it, Mr. Kleiman, that you have not personally

attended meetings at each and every one of the 4,000 local unions within the United Steelworkers?

A. That is correct.

Q. So you are not in a position, I take it, to testify as to what happens on the regular basis at each and every one of these locals; is that right?

A. That is correct.

Q. Your testimony here is based on what your experiences [22]

* * * *

[24] union ones, are probably run much more on an individual basis. One man really does a lot more of the functions than would be the case in a very large local union.

THE COURT: Mr. Cohen, may I ask a question at this point, please?

MR. COHEN: Yes, sir, surely.

THE COURT: Mr. Kleiman, is it a policy of the International, or perhaps a practice of all the locals, to involve as many members on committee assignments as possible?

THE WITNESS: It certainly is the desire of the International Union that this be done, and it is certainly one of the things that is a real goal I think of the Union. The extent to which this is the practice is of course limited by my personal observations, but in terms of those situations I know about, the effort very much is to increase this involvement, and indeed we have done some things even quite recently rather interesting in that regard, I think, that increases this involvement.

THE COURT: Go ahead.

Q. (By Mr. Cohen) Turning your attention away from that subject area for a moment, Mr. Kleiman, you have testified previously that the International Constitution is uniformly applicable to each of the local unions. Insofar as that International Constitution is concerned, could you tell

us what are the constitutional requirements for eligibility to run for and hold office as a local union officer within the Steelworkers?

A. Yes, I could.

Q. What are they?

A. The constitutional requirements are that the candidate must have been in good standing for a period of two years immediately preceding the election, and must have attended one-half of the regular meetings held by the local union during this 36-month period preceding the election with a couple of provisions for exception to that attendance requirement.

Q. What are the,

A. The exceptions are that an individual is deemed to have attended a meeting if he is prevented from attending the meeting by his working hours or by the actual conduct of union business.

Q. Insofar as the first requirement is concerned you testified about, the 24-months in good standing, is that a continuous period that is required of good standing?

A. That is 24 continuous months in good standing, yes.

Q. Subsequent to the election of local union officers in June of 1967, do you recall any situation arising in which your office was advised that the secretary's office was contemplating filing lawsuits challenging the reasonableness of the union's meeting attendance requirements?

A. I do.

Q. Can you tell us about when that took place?

A. I really don't recall. I think it was, let's see, the elections would have been in June of 1967. I think that later, towards the end of 1967, we received a number of letters from the Department of Labor indicating an intention to file suit in a number of situations, but I can't place it closer than that.

Q. When you say a number of situations, are you talking about a number of local union elections?

A. Right.

Q. Upon being so advised as to this possibility, what, if anything, concerned you in your capacity as the General Counsel?

A. The letters indicated that the fundamental concern of the Department of Labor was the attendance requirements that I have just mentioned, and it was rather clear from this that the Department of Labor was thinking about challenging the attendance requirement. Incidentally, we were somewhat aware of a previous concern, because as I recall there was one situation that was still existent from the 1964 elections. I wasn't General Counsel during the 1964 general elections, but after I became General Counsel, there was still one case outstanding in which the Department of Labor had considered, in roughly 1965 or 1966, filing suit, so my concern was that I was aware by reason of these two circumstances that the principal concern of the Labor Department seemed to be this attendance requirement.

Q. Was there any concern on your part as to the application of the constitution to each of the local unions that are involved?

A. Well, that was what was of concern because this, insofar as I was concerned, and insofar as the International officers and other people in a policy position in the Union were concerned, the attendance requirements are quite a meaningful thing to what we consider to be the whole thrust and philosophy and significance of the Union. This becomes all the more the case because of our fundamental program of having the same requirements for all of the local unions, and one of the obvious concerns was whether the Department of Labor's concern was simply related to the dozen or so local unions that were involved in these letters, or whether their concern related to the operation of the rules for all of the local unions.

It would be of great concern to the International Union to have, at that point, had the attendance requirements attacked legally. It would be of even more concern, also of

considerable concern, if the attack were directed towards having different rules for different local unions, because that would impose an impossible administrative problem.

Q. In light of this concern, did there come a time that you requested a meeting with officials from the Secretary of Labor's office?

A. There did.

Q. Do you recall whether or not such a meeting took place?

A. Such a meeting did take place.

Q. Can you tell us roughly when that took place and where, if you know?

A. I believe that it was late in 1967, or early in 1968. It took place in Washington, in the offices of the branch of the Labor Department that, as I recall, administer—certainly, we will say, it was in the offices of the Department of Labor.

Q. Were you present at that meeting?

A. I was present at that meeting.

Q. Who was present, to the best that you can recollect, from the Secretary of Labor's office?

A. I recall quite a number of people being on the other side of the table. I can remember specifically Mr. Donahue, who was, I guess, an assistant—would it be an assistant Secretary of Labor?—in charge of this aspect of the Labor Department's activities, and a Mr. Henry Queen, who I had known previously who functioned in this area, and there were others.

Q. Who was there on behalf of the Steelworkers, do you recall, in addition to yourself?

A. In addition to myself there was Associate General-Counsel; Wynn Newman; I believe that one of our District Directors was there, at least for part of the meeting, a District Director of a district in which one of the cases arose. I am not positive about that. I am not sure who else was there on our behalf.

Q. Mr. Kleiman, before asking you to describe what

transpired at that meeting, could you tell us what steps, if any, you took in advance of that meeting to ascertain what position the International Union would take with respect to a possible lawsuit in these circumstances?

A. Yes.

Q. What steps did you take?

A. If I may go back for just a moment, my recollection is that in late 1965, or early 1966, the Labor Department, in a case arising from the 1964 elections—and I recall it as being a can local, a local in the can industry from I think New Jersey—the Labor Department had indicated then some concern in investigating a complaint arising from that election about our eligibility rules. We had defended those eligibility rules at fairly high levels in the Department of Labor. I can't tell you precisely with whom, but there had been a dialogue.

I thought that we had convinced the Department of Labor in that situation that the rules were reasonable, which is the word that the statute uses. The reason I thought that is that after we made this fairly high level presentation, they decided not to proceed to suit, so when these several letters came forth in 1967, it was a bit of ā shock. As I had done previously, shortly after I became General Counsel in this one can local situation, I had done this before; I sat down with the officers and some of their principal advisors, and we again discussed this question and, you know, of course discussed the Department of Labor's interest, apparent interest, in doing something about this role, and discussed our own policy and view about the eligibility rules.

Q. Were any decisions made as a result of this review which was conducted between yourself and the International officers as to what course of action to pursue?

A. The decision was that we should defend the suit; that we should defend them because the rules seemed to us to be too important to abandon. Obviously the alternatives were to defend, try to convince the Department of Labor

not to proceed. If we couldn't do that, to defend or to drop the rules or restrict the rules, to make the rules somewhat looser.

The feeling was, on the part of the International officers and their advisors, and it was unanimous, that we should not abandon these rules.

Q. What was that position predicated on?

A. The fact that the rules served various purposes that were worthwhile insofar as the Union was concerned, and which probably were the reasons they were developed. I say probably because I wasn't around when the rules were originally promulgated, but certainly this is what I understood to be their purpose.

Q. Am I correct in saying though that what essentially happened was a decision was made to attempt to retain those rules?

A. Exactly.

Q. In the existing form as they were under the 1966 Constitution?

A. That is correct.

Q. What purposes in the eyes of the officers and yourself did that meeting attendance rule in fact serve?

A. Several purposes, one being that there is a desire to have maximum attendance at local unions. This has obviously been a matter of concern to the labor movement and to people interested in the labor movement; the fact that attendance at local union meetings is not as good as we would like to have it be, and that there is a good bit more apathy than we would like.

One of the purposes of having a meeting attendance requirement is to encourage the people to come and certainly to at least require those people who want to say something or do something about the directions of the Union—that is those who are not happy with the local union leadership—we would like them to be there to have the kind of dialogue that you have in a democratic organization between those

that are running the local union and those who have input with respect to it.

The attendance at local unions is quite variable; however, we think it is valuable even at those local unions where it has not given rise to the kind of attendance that one would like to see because at least it insures that those who have problems, those who are in opposition to the local union leadership, will come in order to keep ripe their right to run against the local union leadership.

We think this is important too in order that the local union leadership is not permitted to function as sort of a one-party system unaccountable to anyone. We think it is important that those people get there. We certainly know that it has had that effect, even where it hasn't had the effect of creating a great deal of attendance.

It's gotten the opposition in. The reason we know that is because there is openly just a great deal of opposition at every local union election within the Steelworkers.

The second reason, another reason, is that the job of being a local union officer is much more complicated than I think one would imagine. If one takes a look at our collective bargaining agreements, I think you can't help but be surprised at the complexity of our programs and the complexity of the obligations that are imposed on local union officers in administering the contract. This is aside from the other things that local union officers have to do.

It is terribly important, therefore, that local union candidates and local union officers have had exposure to these programs; have had the maximum of educational opportunities and what-have-you, and certainly one of the places and perhaps the best place to get that kind of exposure, and in some cases maybe the only place to get that kind of exposure, is at local union meetings, and hopefully the meeting attendance requirements would serve that purpose.

Finally, and I think this is very important, I think that because of the importance of the local union operations to the

whole Union, and indeed to the whole labor movement, it is very important that people be running local unions who have a demonstrated interest in the thing.

Q. In this connection, let me just interrupt to ask you this question: In this connection, in terms of the demonstrated interest, was any consideration given by the officers who were making this judgment as to the imposition that would be imposed on a member for having to satisfy our meeting attendance requirement?

A. Yes. The matter of whether the requirements are so onerous that they put an undue burden on one in determining one's interest in the Union's affairs, has been considered, but what it really amounts to is that the average local union meeting runs a couple of hours once a month. All that is required at most in the normal situation is that an individual attend 18 meetings. That would be half of 36, assuming there is a meeting held every month, so the individual is asked to devote, I suppose, 36 hours over a three-year period to the Union, which seems to me, you know—and I think seems to the officers and to the officialdom of the Union—not to be at all an undue requirement, the alternative being that if you have a lesser role or no role, one can become very much turned on just before an election.

THE COURT: Mr. Kleiman, based upon the exchange that the officers of the International had with the officials of the Department of Labor at the meeting you spoke of, which I believe took place late in 1965 or early in 1966 in Washington---

MR. COHEN: Late '67 or early '68—

THE COURT: —what impression, if any, did you gain from your discussions with the Department of Labor as to whether or not the requirement for attending half of the meetings was too high, or whether there should be an attendance requirement at all in the Constitution, in the local rules? Did the Department of Labor say or take the position

that attendance at half of the meetings was too onerous; it should be 40 percent, 30 percent, 20 percent, or no percent?

THE WITNESS: I distinctly received the impression, and I think more than the impression at this meeting, that the Department of Labor had no objection to a meeting attendance requirement, and that its problem was, and that there was some doubt in the minds, because we sort of raised the question of "Well, you know, if you accept the premise of a meeting attendance requirement as they did, then where do you draw the line?"

That line was not defined, but it was clearly a question of where you draw the line, not whether you should or should not have a requirement and I received the distinct impression that they understood and agreed, and at least some of the discussants agreed with the concepts and the purposes of a meeting attendance requirement.

THE COURT: So that the Labor Department people didn't indicate that on attendance they felt that 18 was too many in a three-year period?

THE WITNESS: That is correct.

THE COURT: But they didn't say whether 16 would be too many, or 14, or 12, or 10, or 8, or anything like that?

THE WITNESS: They did indicate that—this reminds me—half of two years would not be objectionable.

MR. COHEN: If I might interject, Your Honor, Exhibit T to the Supplemental Agreement contains excerpts from what is called the Interpretative Manual, which the Labor Department issues as sort of a general guideline, and in that document, which is in evidence, two things are reflected: One that in fact the Secretary did recognize the relationship between the meeting attendance rule and qualifications to hold office, and further did point out that absent some extraordinary circumstances, like the inability of getting from the plant to a local union meeting, but except for that type

of circumstance, a two-year rule which would require attending one-half of the regular monthly meetings over a two-year period was, on its face a reasonable rule, and that is part and parcel of the case.

Are you through, Your Honor?

THE COURT: Yes. Go ahead.

Q. (By Mr. Cohen) Following up Your Honor's question: Do you recall, Mr. Kleiman, whether any discusion took place between yourself and any representative of the Secretary's Office concerning what impact, if any, the Secretary's Office felt there was, the difference between the two-year rule and the three-year rule in terms of the numbers of people who would actually qualify?

A. I am virtually sure we indicated at this meeting—I remember this general discussion—that we felt that the three-year rule really was no less restrictive. We had a distinct feeling that—I am not sure that either of us had statistics really—but we were talking about this problem. We felt that those who attend, are attending, and they are not going to just say, "Okay now, a year has passed, now I have got to start going to meetings," that they are going because of an interest, and we allege that we didn't think there would be very much difference at all, and I don't think they seriously argued with that. I don't remember them seriously doing it.

In any event there were no statistics.

Q. Let me interrupt and ask you this: Was there any effort made, either at that meeting or subsequent to that meeting, by the Secretary's Office to demonstrate that the Steelworkers, by an analysis of statistics, that in fact the difference would have resulted had the year been a two-year rule rather than a three-year rule?

A. No. They made no such effort. I am inclined to think —I know we did a certain amount of looking at some of our cases to see whether there was any serious difference. Of course that isn't really entirely valid in our case, because

there is a three-year requirement, so the first year shouldn't necessarily be that much difference than the second or third year, but we could see no indication from our own statistics, and they never presented anything to us that would support a theory that more people would be eligible under a two-year rule than a three-year rule, nor did they respond to our question which was, "What do you do about participation during the first year?"

"Do you just say that the incumbents can function without benefit of some inducement for the opposition to come and for them to watch what the incumbents were doing?" There was no response to that either.

Q. Turning your attention for a moment back to your prior testimony in which you were explaining how one of the purposes designed by the rule was to enhance the working hours of the individual members' activities in the Union, in your judgment, since you have become the General Counsel, from 1965 on would you say there has been an increase in complexity attendant to holding local union offices?

A. I would say there has been, and very much so.

Q. Could you elaborate on that a little bit, please?

A. Well, Title VII of the Civil Rights Act came into effect, became effective in July of 1965, as a matter of fact. Clearly that imposed new and additional obligations on local union officers, because in the case of the Steelworkers, became very much involved in our seniority systems. We have a number of considerable legal implications that are currently still applicable.

In addition to this, in a lot of our jurisdiction, the question of imports has become very much a problem, which in turn has opened up for local union attention the question of productivity. One of the things we did in our last session was agree on local union productivity committees where the local union officers deal with the top management at each plant about ways of doing something about productivity to

keep American steel and American products of other kinds competitive. This import thing is a problem.

Finally, the three things that occur to me immediately are the whole matter of the Economic Stabilization Program, Phases 1 and 2 imposed tremendous burdens on the local union officers and on lawyers too, I might say, because it is extremely difficult to keep on top of what one can do in the bargaining arena with an Economic Stabilization Program.

Q. What impact, if any, in your judgment has, for example, the enactment of the Landrum-Griffin statute had insofar as the need to be able to cope with these problems is concerned?

A. The Landrum-Griffin Act imposes obviously a number of obligations on union officials with which they must comply, including fiduciary obligations that were not at least codified prior to Landrum-Griffin, and it has had the effect —I am not sure whether it's really Landrum and Griffin— but certainly since the passage of Landrum-Griffin, there is a whole new area of labor law called unfair representation which has developed, and there just probably is no local union that isn't subjected by an unhappy grievant, or many unhappy grievants, to threats, and in many cases claims of unfair representation. The Supreme Court has acted on this matter since passage of Landrum-Griffin—in fact in the past few years Vaca versus Sipes being the lead Supreme Court case—so there is really sort of now developing a legal code of representation of members. This obviously increases the obligation of officers, and certainly imposes burdens on them that they did not have in the old days.

Q. Could you tell us, Mr. Kleiman, since you have become General Counsel in 1965, whether or not one of the basic principles or philosophies of the Steelworkers' Union has been to afford increasing responsibility to its local union officers at the local union level?

A. It very much has been.

Q. Could you tell us to what extent, for example, the procedure for expedited arbitration illustrates this particular principle?

A. I think that's the best example of the direction that the International Union of the United Steelworkers of America has gone in expanding local union participation and giving additional burdens to local union officers.

In the first place we were confronted all through the 60's with an increasing amount of internal plant disturbances, wildcat strikes, slow-downs, just terrible [40]

* * * *

[43] Incidentally, it costs $35 a case rather than $500 a case.

Q. When you refer to the fact that local union people were presenting those cases in arbitration, is that essentially the grievance committeemen and local union officers; is that who that would be normally?

A. It would normally be one of the elected officers, although I suppose in some locals, if there is a very bright young guy he might be the presenter. Actually we are urging the local unions to sort of divide it up as an educational thing among the local union officers, and we have been engaging in some educational process perhaps on the part of the International helping the local unions feel comfortable about presenting these cases to an arbitrator.

Q. Turning your attention for a moment, Mr. Kleiman, back to the time that you and the officers and advisors were discussing what course of action you were to take with respect to the possibility of this litigation, was there any discussion concerning whether or not, in your combined judgment, such things as discussions between the employees at the work place or between local union officers and rank and file members at the work place would furnish an adequate substitute to participation and attendance at local union meetings?

A. We did discuss this.

Q. What conclusion, if any, did you come to?

A. Well, the feeling was that that wasn't a substitute for going to local union meetings, and you know, communing with the staff representative and with the other technical people who from time to time go to local union meetings. The feeling was too that—incidentally this arose because the Department of Labor has sort of had the theory that one learns from being in the work place, and certainly it is helpful to be in the work place; it is advantageous—but basically the work place is not a discussion group.

The employer expects the worker to be there to work, and in most places I think the worker doesn't have time to stand around discussing the union affairs and the affairs of the local community. He is there to work.

Q. Let's turn for a second to the manner in which the Constitutional provision concerning the meeting attendance rule operates. Am I not correct in saying, Mr. Kleiman, that there can be circumstances where, by virtue of the working hours conflict exception, a particular member or members who attended none or very few meetings would nonetheless be eligible to run for and hold local union office?

A. It would be possible for a member to become eligible without attending any meetings because of the exception, yes.

Q. Isn't it true that that kind of a result would seem to act at cross purposes with the concept of needing to acquire some familiarity with union affairs through a local union [44]

* * * *

[47] meetings, combined, could end up qualifying the person?

A. Yes. I think the incidence of people being qualified for some meetings, being qualified by reason of a combination of meetings and work, would be quite a percentage of that, I should think.

Q. Mr. Kleiman, since the Secretary filed the series of lawsuits which have challenged the reasonableness of the meeting attendance rule, have you had occasion to analyze

the trend within the Steelworkers' Union concerning the extent to which there is competition for local union offices?

A. I am aware, I think, yes, as an active person of the degree you know, and general terms of the degree of opposition in the local union elections, yes.

Q. Could you tell us in general terms what that has been in your experience?

A. I think it's very great. I was just thinking last night that either in the '64 or 1967 elections in District 31, which is the district I originally came from and live in, there are 130,000 members and about 225 local unions. Either the '64 or '67 elections there was one local union President of those locals which had over a thousand members who was not defeated. In other words, only one local union President of the locals over a thousand members succeeded himself, and that's a lot of locals, 130,000 members and 225 locals. A very large percentage of the locals are over 1,000 members. I just don't think there are any large locals, and of course you are not as much aware of the smaller locals, but I don't think there are any large locals where there is not opposition for all of the significant spots, and virtually all of the spots, but the significant spots are the top five offices.

Q. What would they be, in your judgment?

A. President, Vice President, Recording Secretary, Financial Secretary, and Treasurer; but, in fact, in the big locals this is just to stress there is opposition for all of the spots, and the only situation where there isn't in small locals, is where you just have a very satisfied situation, you know; some guy is sort of the mother hen President in the small local, and some people are happy with him. When they aren't, he gets opposition.

Q. In addition to looking at the question of challenges, competition for the respective top offices, have you had occasion to attempt to analyze the question of whether or not incumbent local union officers are being returned to their prior office term after a term in the Steelworkers' Union?

A. During all the time that I have been District Counsel or General Counsel, there has been a great deal of very large numbers of incumbents being defeated. You can observe this in steel, for example, in each negotiation, because the local union Presidents, in basic steel which are several hundred local unions, very close to about 700 local unions right there, compose the industry conference, and that's also true of our other big industries, so we really see these Presidents quite frequently as representatives or delegates to the industry conferences, and their composition keeps changing, keeps getting incidentally younger and younger, and the old faces just sort of disappear every three years.

Q. When you testified previously about what are generally considered the five top officers within the local union, are there in addition, certain offices which are not always covered by the Landrum-Griffin Act, which in your judgment also comprise a significant office-holding position with the local union?

A. Yes. I guess offices isn't really quite the right word, because office has a significance in the law, but they are very important elected positions, and the grievance committeemen, particularly in the big local unions, the big plants, big steel mills, the grievance committeemen are very important offices, because they really administer the contract.

Q. Have you had occasion to look at the situation with respect to the election of grievance committeemen to ascertain whether or not there has been competition within those particular positions?

A. There is tremendous competition for those positions.

Q. Has it been commonly your experience?

A. Incidentally, the eligibility rules apply to those positions too.

Q. Are those positions, in your experience, such that quite frequently they are spring boards to higher local and/or International staff representative positions?

A. Very much so.

Q. Why would that be?

A. It's just because after all the basic work of the union is bargaining and administering the contract, and the grievance committeemen are in some ways really the technicians or their assistants, the guys that help them. The grievance committeemen, in a big steel mill, will have a whole quantum of people working for him called assistant committeemen, or stewards, or whatever they happen to call him at the particular location, and these jobs are all jobs where one distinguishes them in performing the work of the Union.

Q. What is their exposure to the rank and file in terms of accessibility during their period of time?

A. They service the rank and file. Those of us who work for the International see the rank and file, you know, sporadically, but these people live with and really do the work of the Union.

Q. One final question, Mr. Kleiman: In looking at the 24-month continuous good standing requirement of the Constitution, could you tell us whether or not there is any overlapping purpose between that requirement and the 36-month meeting attendance requirement?

A. So far as I am concerned, these two requirements serve different purposes. One is to fundamentally see that an individual has had at least two years in the work place, that is the 24-month good standing, and if he has been there that long, that he has kept up with his dues obligations and what-have-you during that period, but that is, I think, you know fundamentally to see that one has met his sort of legal obligations and the other is to serve these more functional purposes that I have talked about earlier.

MR. COHEN: I have no further questions, Your Honor.

THE COURT: I would like to ask one question before we recess, before cross-examination, if there is any:

Mr. Kleiman, do you know if the challenge of the Secre-

tary—I take it you used the term Secretary to designate the Department of Labor?

MR. COHEN: Yes, Your Honor.

THE COURT: —do you know if the challenge from the Secretary to the attendance requirement of one-half the meetings over a 36-month period is based upon any empirical study done by the Department of Labor which indicates that a very small percentage or a relatively small percentage of the membership of a local only attends the meetings, or that there has been a self-perpetuation of local officers?

Perhaps what I am asking you is: What hard information, with respect to the attendance record at local unions or the self-perpetuation of officers, has prompted the Secretary to challenge this attendance requirement?

THE WITNESS: I am aware of no hard evidence they have. I am unaware of them having even asked for this information other than, of course, they have studied it in the individual cases that they have pursued against us in various jurisdictions, but I am unaware that they have made any effort to study the Union generally, you know, the 4,000 or any significant percentage of the 4,000 local unions to determine its impact, and I am also unaware that they have ever really talked to our people about this problem.

THE COURT: Since this challenge has arisen, has the Union, the International itself, made any study of attendance?

THE WITNESS: We have made some. We have obviously watched it very closely to sort of verify or try to verify or approve or disapprove our reaction that the rule served a purpose, because we have no interest in the rule except as it serves this purpose. We who work for the International are defending the rule, but because we think it serves purposes for our members and for the Union.

We did do a study resulting from the '67 elections. Mr.

Cohen may recall this better than I. It was as a result of those certain matters that came to the attention of the Executive Board to determine basic involvement and the extent to which individuals were and were not perpetuating themselves.

MR. COHEN: I perhaps could cast some light on that, if Your Honor would like, although I will say it in an advocate's role, not as a witness. I think Mr. Lahne at least was present when this occurred, and would attest to the validity of what I am saying.

At the original trial, Your Honor, in the Local Union 67-99 case, which was tried before the Southern District of California, before Judge Crarey, the Union prepared and sought to have the Court receive in evidence an exhibit which was designed to show and which showed that with respect to each of the approximately eight local unions that the Secretary was suing because of the meeting attendance rule, that with respect to each and every one of those locals, the five key officers which Mr. Kleiman has testified to; President, Vice President, Recording Secretary, Financial Secretary and Treasurer, there was in fact substantial competition which resulted in a major reshuffling of offices. The Secretary of Labor at the trial, through The United States Attorney, objected to the receipt in evidence of that document which was marked and he did so based on what ultimately became a stipulation entered into that record which was acceptable to my partner, Mr. Gottesman, who was the trial counsel for the Steelworkers that day, and the Secretary said, "We are not challenging the question of whether or not your rule operates to perpetuate incumbents; that we do not think is the touch stone of the legal standard, but we will acknowledge that in fact it does not at least insofar as these situations are concerned, and if I might be permitted to speak on behalf of the Secretary, because I believe I have lived through this long enough to know what his position

was in that regard, I believe he said it was the effect question, let's look to see how many people are disqualified.

THE COURT: Let's save that for later.

THE WITNESS: Judge, one thing occurs to me. I remember a little more what the study was, if you would care for me to elaborate on what we did.

THE COURT: Yes.

THE WITNESS: It was after the '67 elections, and at the point at which we became—we were sort of interested in what had happened anyhow—then we also became aware that the Department of Labor was concerned about this eligibility thing. I think we figured that we had 3700 local union elections in '67, in the 3700's. There is a procedure for appeal which is very much used within the organization, and everyone is very much aware that goes to the Executive [54]

* * * *

[62] [CROSS EXAMINATION]

employees do you believe attend union meetings if there is not something like an appearance by yourself or a wildcat?

A. In terms of myself, I can't be certain because I have described my experience, so I really don't know what happens at a more mundane meeting in terms of attendance, in terms of percentage of attendance.

Q. Is there any reason to believe that a person who attends a meeting would be more familiar with the union problems than someone who learns about the problems from a steward or through the grapevine in a factory?

A. Absolutely, there would be reason.

Q. Has there ever been any study to determine whether or not that is true?

A. I can tell you what my own studies indicate. My own

studies indicate that the average worker has very little communication in the plant. Representing, say, an injured worker or representing a grievant, he will sit down to prepare the case with him. He will say, "Okay, who observed this?"

By and large the worker in the plant doesn't even know the full name of the guy that works next to him, and I found this amazing when I first encountered it. He knows him by a nickname; he doesn't know where he lives; he doesn't know anything about him except he knows what he calls him, which is very frequently not his real name. It is just a nickname that they use.

I really didn't understand that. I now am beginning to realize the obvious reason is that they don't have time to sit around discussing their private lives or anything else, so I am convinced there just isn't any real work place discussion of these union affairs with which my testimony is concerned, and with which the interest is concerned.

I am pretty well convinced that the only regular constitutional communication device is meetings, and then of course we do tend to go beyond meetings by having educational programs beyond the meetings, but the meetings are the starting point of the communication, and I don't think it can come from the floor.

I think the base, the average worker is very anxious to get in there, and very anxious to get out of there, and if you are around a plant gate at say, starting time or closing time, or a time clock, you will see that. They just don't tarry to discuss the union's affairs or anything else.

Q. Would you say that the average worker does not know his union steward and does not communicate with him?

A. No. I think the average worker knows his union steward, but he communicates with him, you know, when he has a problem. In fact he has to get permission to communicate with him in the average plant. You can't talk to anybody, you know, who isn't the guy you have to talk to in your work

unless you get the permission of your supervisor to talk with him.

The union steward is a very harrassed guy who represents several hundred people possibly, and he is being pursued by one fellow after another with a problem, so they don't really have time to sit around philosophizing about the union. They are dealing with the individual worker's individual immediate job.

Q. Are you aware that in 1956, President McDonald, who was President of the Steelworkers, stated that he thought the whole business of attendance requirement should be restudied by the Union?

A. I am not aware of that, no. I am not aware of that.

Q. Do you know if any study was performed on attendance requirements after '56, or before?

A. The only studies—and we are again dealing with that term—that I am aware of were those that I described.

Q. Are you aware of attendance in other unions? By that I mean personal knowledge of employees who may attend a union meeting?

A. I am not as aware—I am aware of no union of an international nature, you know, where the attendance applies to 4,000 unions. I am aware, by reason of my law practice, or previous law practice, of individual local unions, of other international unions, and you know, sort of what the attendance is at some of the meetings I have attended for other local union clients, but I am not aware on an international basis of any union other than the Steelworkers.

Q. Let's take one of those local unions which does not have an attendance requirement and compare it with the Steelworkers, a Steelworkers Local which does have an attendance requirement. Could you compare the two and tell us if there is much difference, if any?

A. I think most of the locals I am aware of have an attendance requirement or inducement of some kind. Some, for example, will rebate some money, you know, or something like that or give some kind of an inducement or something like that. I think most of the locals that I have dealt with probably have some kind of an attendance thing, so I am not sure I can really comment very well on the local that doesn't.

As I sit here, one that doesn't doesn't really come to my mind.

Q. Does the fact that the Steelworkers' unions require attendance mean that they have better attendance?

A. I really don't know. I really don't know the answer to that. I would hope it does, but I really don't know.

Q. You mentioned inducements. Do some of these inducements work better than others?

A. I don't know. I would like to think, and I have thought about this, and this is purely my opinion, that the attendance eligibility requirement is the best one and that it works better because I am convinced that there are more local union election contests and there is greater competition for local union office in the Steelworkers, than in other unions I know of. I know of many other locals in the Chicago area where the leadership has just sustained itself since long before I became a labor lawyer, and that is not true in the Steelworkers in the Chicago area for example, at all. There is much greater contest, and there is much greater incidence of incumbents being defeated in the Steelworkers than in any of the other locals that I know of or have dealt with, I think.

Q. Could you tell us what locals you are speaking of? Be a little more specific.

A. Oh, for example, I think the first client I ever had was Local 512 of the Transport Workers Union, which represents the mechanics at American Airlines, and in Chicago and in several midwestern cities, it is one of three big locals that has a geographical area. The fellow who was the President there was the President before I became a labor lawyer

and resigned just last year, chose not to run again. He is going to run again next term, and he is going to be elected.

We represent the Bakeryworkers, the new Bakeryworkers. They didn't even change Presidents when they left the B&C, when the B&C was expelled, and they went with the cleanup Bakeryworkers. The same President has been in office all of that time.

We represent Oilworker locals in the Chicago area, our office does, and basically they have had the same leadership.

Our office represents the Typographical Union. This is a very interesting system. They have a party system. They always have had a party system, and all the locals and International are very much like the Democratic and Republican Party, but you just have competition between the two parties really. You don't get a large number of people contesting for office. You get more people contesting for office under our system than you do under a party system, although our big locals do have sort of a party system.

Q. Mr. Kleiman, are you aware of any local at all that does not have an inducement or a participation requirement?

A. I am sure that I am but as I sit here I couldn't say Local so and so does not. I can think of some locals that do have inducements. I can't, as I sit here, precisely think of some that don't.

I think the Oilworkers locals don't.

Q. Knowing for sometime that the issue of participation was going to come up, did you ever take a look at a union which did not have inducements or required participation and compare it to a Steelworkers local as to whether or not they have more or a higher percentage of people turning out at their meetings, or the same?

A. Normally, no. Normally, no.

Q. So you don't know one way or the other which would have the best turnout, percentage-wise?

A. No, just the reactions that I have told you, they were

personal reactions that I have mentioned earlier, but I can't prove those personal reactions statistically as I sit here.

Q. You were saying that there are certain agents, I believe, who work with the locals, union locals?

A. Staff representatives.

Q. Don't these staff representatives educate the officers in the locals as to their duties?

A. Yes, surely.

Q. So wouldn't it be possible for someone who had never attended a local, even if it was because he worked nights and was unable to attend the meetings, to learn from a staff representative exactly what his job would consist of and be able to perform it?

A. Oh, sure it would be possible, and I am sure that [68]

* * * *

[76] JOHN ROONEY

Called as a witness on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

by Mr. Cohen:

Q. Mr. Rooney, would you give us your full name and the spelling, please, for the record?

A. John R. Rooney (spelling) R-o-o-n-e-y.

Q. Where do you live, Mr. Rooney?

A. My home address is 811 Alden (spelling) A-l-d-e-n Drive, Pittsburgh. My office address is 1500 Commonwealth Building, Pittsburgh.

Q. Is that the address of the International Union Headquarters that's been referred to?

A. That is the International Headquarters, yes.

Q. Are you employed by the International Union, sir?

A. I am.

Q. Could you tell us in what capacity you are employed?

A. I am Administrative Assistant to the International President.

Q. Mr. Abel?

A. Mr. Abel.

Q. For approximately how long have you held that position, sir?

A. I have been his Administrative Assistant for almost [76]

* * * *

[79] reading of those resolutions, the basic nature of such requests coming in from the local unions?

A. The overwhelming number of them, percentagewise, asks that the meeting attendance requirement be made even more stringent than currently, particularly they seek to have us change so as to not give meeting attendance credit for working hours or union activities, particularly working hours.

Q. These, I take it, are resolutions that come to the Headquarters from any one of the 4,000 or so local unions within your jurisdiction?

A. That is correct.

Q. You have been present in this hearing room during the testimony of Mr. Kleiman; is that correct, Mr. Rooney?

A. Yes.

Q. Without asking you to repeat or asking you the same questions that we directed to Mr. Kleiman, can you tell us whether or not, in your capacity as Administrative Assistant, you have been privy through these years to discussions with the International officers concerning any possible modification of the meeting attendance rule?

A. I have.

Q. Could you tell us as to your understanding of the basic philosophy which the Steelworkers Union or the officers has pursued during these years?

MR. BRINSFIELD: Your Honor, I will object to that as hearsay.

THE COURT: Overruled.

A. The basic philosophy has been that we want to be, and we hope we are, a responsible union. By responsible union I mean one that believes in the sanctity of contracts. We may not be pleased with the contract which we eventually have to sign, but once it is signed we believe it should be lived up to.

We believe that that can best be done if you have responsible local union officers, and we think that local union officers become responsible only through education, and by education I mean through knowing the problems of the Union, the local union, attending its meetings, and gradually becoming committed to the idea also that they must be responsible.

Q. Through the years have you had occasion to attend local union meetings, Mr. Rooney?

A. Many of them.

Q. Once again, without asking you to go through all the questions I asked Mr. Kleiman, would you say that his testimony accurately reflects your observations as to what happened at local union meetings?

A. Yes, I would.

MR. COHEN: I have no further [80]

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[91] Q. (By Mr. Cohen) Directing your attention to a prior section, Section 422.206, and I read to you as follows:

"A provision requiring a member to have attended at least one-half of the regular meetings of his local union for 24 months previous to the election before he may be eligible to hold office is not unreasonable if it is applied fairly and uniformly to all members."

Are you aware of that provision of the manual, sir?

A. I have read it since the stipulation.

Q. With this particular provision that I have just read you in mind, would you agree with me that the 12-month

or the 24-month meeting attendance rule reflects the Secretary's recognition that in fact the meeting attendance rule is designed in certain circumstances to show that the candidates have the qualifications to hold office?

A. I will only agree that what is stated there is the opinion of the Secretary. I will not interpret it.

Q. Are you employed by the Labor Department?

A. Yes, I am.

Q. As such I assume that you are responsible for carrying out, implementing the policies of the Secretary of Labor?

A. I am not concerned with the enforcement authority of the Secretary or carrying out any enforcement policies.

Q. I see. Have you, since you have been involved in these proceedings, dating back four years ago, ever had any occasion to analyze what impact, if any, there was in terms of how many people would ultimately be eligible for local union office if instead of having a two-year rule there was a three-year rule under a particular local union constitution?

A. No, sir.

Q. Never done that. Do you have any empirical information or any statistical data to support the proposition that more members would be eligible under a two-year rule than are in fact eligible under a three-year rule?

A. No, sir.

Q. You were in the room, I take it, Mr. Lahne, when you heard Mr. Kleiman and Mr. Rooney discuss the format of the local union meetings that they had participated in through the years; is that correct?

A. Yes, sir.

Q. Is it your testimony, Mr. Lahne, in the face of having heard Mr. Kleiman and Mr. Rooney, that in fact shop talk and discussions at the plant level are the equivalent of actual attendance at a local union meeting for purposes of acquiring knowledge as to how that local union functions?

A. I have stated that they are equally useful in my [92]

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